

8-30-2013

Hap Taylor & Sons v. Summerwind Partners Clerk's Record v. 2 Dckt. 40514

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(VOLUME 2)

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

HAP TAYLOR & SONS, INC., d/b/a
KNIFE RIVER, an Oregon corporation,

Plaintiff-Cross Respondent,

-vs-

L222-1 ID SUMMERWIND, LLC.,
A Nevada limited liability corporation,

Defendant-Cross Appellant,
And

IDAHO GOLF PARTNERS, INC.,

Intervenor-Appellant.

CONGER MANAGEMENT GROUP, INC.,
An Idaho corporation,

Plaintiff-Counterdefendant-Cross
Defendant-Respondent,

-vs-

STANLEY CONSULTANTS, INC.,

Defendant-Counterclaimant-Cross
Claimant-Appellant,
And

INTEGRATED FINANCIAL ASSOCIATES,
INC., a Nevada corporation,

Defendant-Counterdefendant-Cross
Defendant-Respondent-Cross Appellant,
And

GENEVA EQUITIES, LLC., an Idaho limited
Liability company; TRADITIONAL
SPRINKLERS AND LANDSCAPING, INC., an
Idaho corporation; DENNIS PHIPPS WELL
DRILLING, INC., an Idaho corporation;
RIVERSIDE, INC., an Idaho corporation,

Defendants-Counterdefendants-
Cross Defendants-Respondents,
And

IDAHO GOLF PARTNERS, INC.,

Intervenor-Appellant.

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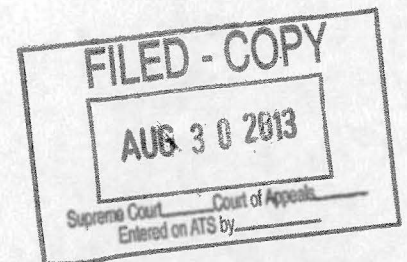
Appealed from the District of the Third Judicial
for the State of Idaho, in and for Canyon County

Honorable JUNEAL C. KERRICK, District Judge

Thomas E. Dvorak, Martin C.
Hendrickson, Elizabeth M Donick
Attorneys for Appellant (Stanley Consultants)

Michael O. Roe
Attorney for Appellant (Integrated Financial
Assoc., Summerwind Partners)

David T. Krueck
Attorney for Respondents



40514

IN THE SUPREME COURT OF THE
STATE OF IDAHO

HAP TAYLOR & SONS, INC., d/b/a)
KNIFE RIVER, an Oregon corporation,)
)
Plaintiff-Cross Respondent,)
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-vs-)
)
L222-1 ID SUMMERWIND, LLC.,)
a Nevada limited liability corporation,)
)
Defendant-Cross Appellant,)
And)
)
IDAHO GOLF PARTNERS, INC.,)
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Intervenor-Appellant.)
)

CONGER MANAGEMENT GROUP, INC., an)
Idaho corporation,)
)
Plaintiff-Counterdefendant- Cross)
Defendant-Respondent,)
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-vs-)
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STANLEY CONSULTANTS, INC.,)
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Defendant-Counterclaimant-Cross)
Claimant-Appellant,)
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INC., a Nevada corporation,)
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Defendant-Counterdefendant-Cross)
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And)
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GENEVA EQUITIES, LLC., an Idaho limited)
Liability company; TRADITIONAL)
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Idaho corporation; DENNIS PHIPPS WELL)
DRILLING, INC., an Idaho corporation;)
RIVERSIDE, INC., an Idaho corporation,)
)
Defendants-Counterdefendants-)
Cross Defendants-Respondents,)
And)
)
IDAHO GOLF PARTNERS, INC.,)
)
Intervenor-Appellant.)

Supreme Court No. 40514-2012

Appeal from the Third Judicial District, Canyon County, Idaho

HONORABLE JUNEAL C. KERRICK, Presiding

Thomas E. Dvorak, Martin C. Hendrickson, Elizabeth M. Donick,
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Attorney for Respondents

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F I L E D
AM 4:10 PM
MAR 24 2009

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a
KNIFE RIVER, an Oregon corporation
doing business as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an
Idaho limited liability company, *et al.*

Case No. CV 08 4251-C

**ANSWER TO CROSSCLAIM OF
STANLEY CONSULTANTS, INC.
Dated July 16, 2008**

COMES NOW, PMA, Inc., and in response to Stanley Consultants, Inc.'s
(hereinafter "Stanley" or "SCI") Crossclaim, pleads and alleges as follows:

ANSWER

First Affirmative Defense

1. PMA, Inc. Denies each and every allegation not specifically admitted herein.
2. Paragraphs 1 through 39 do not require a response from PMA, Inc.

ANSWER TO CROSSCLAIM OF STANLEY CONSULTANTS, INC.
Dated July 16, 2008 - 1

Second Affirmative Defense

SCI's Crossclaim fails to state a cause of action against PMA, Inc. upon which relief can be granted.

Third Affirmative Defense

Pursuant to the terms of Idaho Code, Section 45-512, PMA, Inc.'s lien is superior in priority to SCI's lien and PMA, Inc. should be paid in full first prior to SCI receiving any proceeds from the sale of the subject Property.


Prayer for Relief on SCI's Crossclaim

WHEREFORE, PMA, Inc. prays for judgment on SCI's Crossclaim as follows:

1. That SCI's claim against PMA, Inc. Be dismissed, with prejudice;
2. That PMA, Inc.'s lien be declared superior in priority to SCI's lien pursuant to Idaho Code, Section 45-512;
3. For an award of attorney fees pursuant to Idaho Code, Section 45-513; and
4. For such other and further relief as this Court may deem appropriate.

Dated this 24th day of March, 2009.

LAW OFFICE OF DONALD W. LOJEK, CHTD.

By 
Donald W. Lojek
Attorney for PMA, Inc.


CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 623 West Hays Street, Boise, Idaho, certifies that on the 24th day of March, 2009, he caused a true and correct copy of the foregoing document to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

David T. Krueck	<input type="checkbox"/>	U.S. Mail
TROUT JONES GLEDHILL FURHMAN, P.A.	<input type="checkbox"/>	ECF/ECM
Facsimile: (208) 331-1529	<input type="checkbox"/>	Hand Delivered
<i>Attorneys for Plaintiff</i>	<input type="checkbox"/>	Overnight Express Mail
	<input checked="" type="checkbox"/>	Facsimile Copy
Michael O. Roe	<input type="checkbox"/>	U.S. Mail
MOFFATT THOMAS BARRETT ROCK	<input type="checkbox"/>	ECF/ECM
& FIELDS, CHTD.	<input type="checkbox"/>	Hand Delivered
Facsimile: (208) 385-5384	<input type="checkbox"/>	Overnight Express Mail
<i>Attorneys for Integrated Financial Assoc. and</i>	<input checked="" type="checkbox"/>	Facsimile Copy
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GIVENS PURSLEY LLP	<input type="checkbox"/>	ECF/ECM
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<i>Attorneys for Stanley Consultants</i>	<input type="checkbox"/>	Overnight Express Mail
	<input checked="" type="checkbox"/>	Facsimile Copy
David E. Wishney	<input type="checkbox"/>	U.S. Mail
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<i>Attorneys for L222-1 ID Summerwind, LLC</i>	<input type="checkbox"/>	Overnight Express Mail
	<input checked="" type="checkbox"/>	Facsimile Copy
Sam Diddle	<input type="checkbox"/>	U.S. Mail
EBERLE BERLIN KADING TURNBOW	<input type="checkbox"/>	ECF/ECM
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 S:\CLIENTS\7795\8\Order Entering Default of Dennis Phipps.DOC
 Attorneys for Stanley Consultants, Inc.

FILED
 35- A.M. P.M.

MAR 26 2009

CANYON COUNTY CLERK
 T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE RIVER, an
 Oregon corporation doing business as Knife River,

Plaintiff

v.

L222-1 ID SUMMERWIND, LLC, an Idaho limited
 liability company; et. al.,

Defendants.

CASE NO.: CV-08-4251C ✓

ORDER ENTERING
 DEFAULT

Re: Phipps Well Drilling

HAP TAYLOR & SONS, INC. d/b/a KNIFE RIVER, an
 Oregon corporation doing business as Knife River,

Plaintiff

v.

L222-1 ID SUMMERWIND, LLC, an Idaho limited
 liability company; et. al.,

Defendants.

CASE NO.: CV08-4252C

CONGER MANAGEMENT GROUP, INC., an Idaho
 corporation,

Plaintiff,

v.

L222-1 ID SUMMERWIND, LLC, an Idaho limited
 liability company; et. al.,

Defendants.

CASE NO.: CV08-11321

ORDER ENTERING DEFAULT- 1

IT APPEARING, that Crossdefendant Dennis Phipps Well Drilling, Inc. ("Dennis Phipps") was served with the Summons and Crossclaim in this matter by Crossclaimant Stanley Consultants, Inc.; and

IT APPEARING, that Dennis Phipps is in default for failure to plead or otherwise defend as required by law.

IT IS HEREBY ORDERED that DEFAULT is hereby entered as and against Crossdefendant Dennis Phipps as of the date set forth below. A final judgment will be entered once the priority of claims has been determined at the conclusion of this matter.

DATED this 25 day of March, 2009.

By 

District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of March, 2009, I caused to be served a true and correct copy of the foregoing document to the persons listed below by the method indicated:

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*Pro Se Defendant, Tom Mehiel,
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Attorneys for Stanley Consultants, Inc.

9 FILED
A.M. P.M.

MAR 26 2009

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE RIVER, an
Oregon corporation doing business as Knife River,

Plaintiff

v.

L222-1 ID SUMMERWIND, LLC, an Idaho limited
liability company; et. al.,

Defendants.

CASE NO.: CV-08-4251C ✓

ORDER ENTERING
DEFAULT

RE: L222-1 ID SUMMERWIND, LLC
222-2 ID SUMMERWIND, LLC
222-3 ID SUMMERWIND, LLC
UNION LAND COMPANY, LLC

HAP TAYLOR & SONS, INC. d/b/a KNIFE RIVER, an
Oregon corporation doing business as Knife River,

Plaintiff

v.

L222-1 ID SUMMERWIND, LLC, an Idaho limited
liability company; et. al.,

Defendants.

CASE NO.: CV08-4252C

CONGER MANAGEMENT GROUP, INC., an Idaho
corporation,

Plaintiff,

v.

L222-1 ID SUMMERWIND, LLC, an Idaho limited
liability company; et. al.,

Defendants.

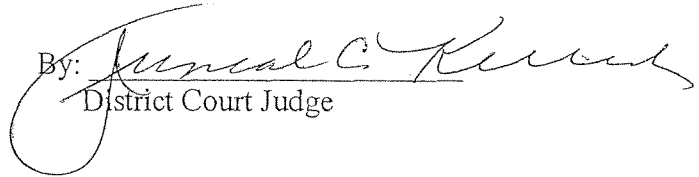
CASE NO.: CV08-11321

IT APPEARING, that Crossdefendants L222-1 ID Summerwind, LLC, L222-2 ID Summerwind, LLC, L222-3 ID Summerwind, LLC and Union Land Company, LLC ("Summerwinds and Union Land") was served with the Summons and Crossclaim in this matter by Crossclaimant Stanley Consultants, Inc.; and

IT APPEARING, that Summerwinds and Union Land are in default for failure to plead or otherwise defend as required by law.

IT IS HEREBY ORDERED that DEFAULT is hereby entered as and against Crossdefendants Summerwinds and Union Land as of the date set forth below.

DATED this 25 day of March, 2009.

By: 
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of March, 2009, I caused to be served a true and correct copy of the foregoing document to the persons listed below by the method indicated:

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Rebecca A. Rainey

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Attorneys for Integrated Financial Associates, Inc.,

Geneva Equities, LLC, and Certain Other Names

Defendants

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*Attorney for Michael W. Benedick
& Carol L. Benedick*

Tom Mehiel, President

Valley Hydro, Inc.

1904 E. Beech Street

Caldwell, ID 83605

*Pro Se Defendant, Tom Mehiel,
d/b/a Valley Hydro, Inc.*

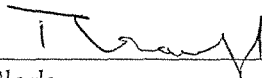
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S:\CLIENTS\7795\8\Default Judgment of Summerwinds and Union Land.DOC
Attorneys for Stanley Consultants, Inc.

FILED
9/10 AM P.M.

MAR 26 2009

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE RIVER, an
Oregon corporation doing business as Knife River,

Plaintiff

v.

L222-1 ID SUMMERWIND, LLC, an Idaho limited
liability company; et. al.,

Defendants.

HAP TAYLOR & SONS, INC. d/b/a KNIFE RIVER, an
Oregon corporation doing business as Knife River,

Plaintiff

v.

L222-1 ID SUMMERWIND, LLC, an Idaho limited
liability company; et. al.,

Defendants.

CONGER MANAGEMENT GROUP, INC., an Idaho
corporation,

Plaintiff,

v.

L222-1 ID SUMMERWIND, LLC, an Idaho limited
liability company; et. al.,

Defendants.

CASE NO.: CV-08-4251C ✓

DEFAULT JUDGMENT

CASE NO.: CV08-4252C

Re: L 222-1 ID Summerwind
L 222-2 ID Summerwind, LLC
L 222-3 ID Summerwind, LLC
Union Land Company, LLC

CASE NO.: CV08-11321

WHEREAS, Crossdefendants L222-1 ID Summerwind, LLC, L222-2 ID Summerwind, LLC, L222-3 ID Summerwind, LLC and Union Land Company LLC ("Summerwinds and Union Land") have regularly been served with the Summons and Crossclaim in this matter;

WHEREAS, Crossdefendants Summerwinds and Union Land failed to plead or otherwise defend as required by the Idaho Rules of Civil Procedure.

WHEREAS, the legal time for pleading or otherwise defending has expired,

WHEREAS, Crossclaimant Stanley Consultants, Inc. ("Stanley") has shown by Affidavit that Crossdefendants Summerwinds and Union Land are not members of the military forces of the United States of America on active duty, nor infants, nor incompetent persons,

WHEREAS, the Defaults of said Summerwinds and Union Land have been duly entered herein according to law upon the application of Stanley, supported by Affidavit;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That judgment is hereby rendered in Case No: CV-08-4251C, in favor of Stanley and against Crossdefendants Summerwinds and Union Land;

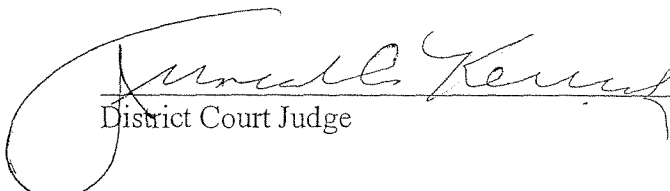
2. That pursuant to the prayer of said Crossclaim on Count 5, beginning at paragraph 35, the contract claim, judgment is hereby entered against Summerwinds and Union Land in the full principal amount currently due under said contract of thirty one thousand eight dollars and fourteen cents (\$31,008.14), plus the interest accrued on said contract, as of March 6, 2009, in the amount of six thousand six hundred eighty dollars and eighty nine cents (\$6,680.89), and Summerwinds and Union Land shall also be liable to the Crossclaimant Stanley for reasonable attorney's fees and costs as plead in the Crossclaim paragraph 39 in the sum of three thousand five hundred dollars (\$3,500.00) which all together totals an amount of forty one

thousand one hundred eighty nine dollars and three cents (\$41,189.03), which sum shall bear interest hereinafter at the rate allowed by law on judgments, until the date said judgment is satisfied;

3. That on Count 1, the Foreclosure Count, beginning with paragraph 18, that Crossclaimant Stanley's Claim of Lien against the following described real property (the "Property"), attached hereto as Exhibit "A," is a valid and fully enforceable lien pursuant to Idaho Code §§ 45-501 *et seq.*, and other applicable law as against Crossdefendants Summerwinds and Union Land and that said Crossdefendants are hereby precluded from pleading and asserting any and all defenses to priority, validity and enforceability of Stanley's lien against the Property and that all right, title, claims and interest of the Crossdefendants Summerwinds and Union Land to the Property described above, are junior and subservient to the lien of the Crossclaimant herein; and

4. That Crossdefendants Summerwinds and Union Land, be and are forever barred and foreclosed of all right, title and interest and equity of redemption to the premises, except the right of redemption as provided by the statutes of the State of Idaho.

DATED this 25th day of March, 2009.


District Court Judge

WILLIAM L. SMITH, ISB #6134
SMITH HORRAS, P.A.
5561 N. Glenwood St., Suite B
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FILED
A.M. 520 P.M.

OCT 14 2009

CANYON COUNTY CLERK
J DRAKE, DEPUTY

Attorneys for Extreme Line Logistics, Inc.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE)
RIVER, an Oregon corporation doing business)
as Knife River,)

Plaintiff,)

v.)

L222-1 ID SUMMERWIND, LLC, an Idaho)
Limited Liability Company, et. al.,)

Defendants.)

Case No. CV 08 4251-C

MEMORANDUM IN SUPPORT OF
EXTREME LINE LOGISTICS,
INC.'S MOTION FOR SUMMARY
JUDGMENT

HAP TAYLOR & SONS, INC. d/b/a KNIFE)
RIVER, an Oregon corporation doing business)
as Knife River,)

Plaintiff,)

v.)

L222-1 ID SUMMERWIND, LLC, an Idaho)
Limited Liability Company, et. al.,)

Defendants.)

Case No. CV 08 4252-C
(Consolidated with Case No.
CV 08 4251-C)

CONGER MANAGEMENT GROUP, INC an)
Idaho corporation,)

Plaintiff,)

Case No. CV 08 11321-C
(Consolidated with Case No.
CV 08 4251-C)

v.)
)
L222-1 ID SUMMERWIND, LLC, an Idaho)
Limited Liability Company, et. al.,)
)
Defendants.

COMES NOW, Defendant/Cross-Claimant EXTREME LINE LOGISTICS, INC. (hereinafter "Extreme Line"), through its counsel of record, William L. Smith of the firm SMITH HORRAS, P.A., and hereby submits this Memorandum in Support of Extreme Line Logistics, Inc. Motion for Summary Judgment seeking Extreme Line's Claim of Lien be held valid and senior in priority to the mortgage of Integrated Financial Associates, Inc. (hereinafter "Integrated").

I. INTRODUCTION

Extreme Line entered into a contract with Union Land Company to provide material and equipment to improve the Property. Thereafter, on or around June 20, 2006 Extreme Line commenced work on the Property, and performed under the contract by providing labor, material, and equipment to improve the Property. Extreme Line completed its obligations under the contract, and ceased its work on the Property by November 27, 2007.

Extreme Line was not fully compensated for the labor, material and equipment it provided to improve the Property and duly recorded a Notice and Claim of Lien as Instrument Number 2007081815 in the amount of \$297,592.40 in the Office of the Canyon County Recorder on December 19, 2007.

Defendant/Counterclaimant Integrated Financial Associates, Inc. (hereinafter "IFA") recorded its Mortgage on the Property, Instrument No. 2006100908 (hereinafter "Mortgage"), for the amount of \$4,000,000.00 in the office of the Canyon County Recorder on December 22, 2006.

Extreme Line has moved the court for summary judgment on its counterclaim against IFA seeking an order determining that Extreme Line's Claim of Lien is valid and senior in priority to the IFA's mortgage on the subject property.

II. STANDARD OF REVIEW

A motion for summary judgment should be granted when the "pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c); *Mutual of Enumclaw, Ins. Co. v. Roberts*, 128 Idaho 232, 234, 912 P.2d 119, 121 (1996). The nonmoving party is entitled to the benefit of all the favorable inferences and conclusions, which might reasonably be drawn from the evidence. If reasonable people could reach different conclusions or draw conflicting inferences from the evidence, the motion must be denied. *Friel v. Boise City Housing Authority*, 126 Idaho 484, 485, 887 P.2d 29 (1984). However, if the evidence reveals no disputed issues of material fact, the court may grant the motion as a matter of law. *Id.*

In addition, where evidentiary facts are not in dispute, but different inferences may be drawn from those facts, and where the trial court rather than a jury will be the trier of fact, the trial court may resolve any conflicts in the possible inferences on a summary judgment motion. *Riverside Development Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d 657 (1982).

Finally, I.R.C.P. 56(e) provides that the nonmoving party may not rest upon the mere allegations or denials of that party's pleading to avoid summary judgment. The nonmoving party must set forth in an affidavit specific facts showing there is a genuine issue for trial. I.R.C.P. 56(e). Further, the affidavits either supporting or opposing the motion must be made on

personal knowledge, set forth facts that would be admissible in evidence and show that the affiant is competent to testify. *Id.*

III. STATEMENT OF UNDISPUTED FACTS

The following facts are undisputed:

1. Extreme Line entered into a contract with Union Land Company to provide labor, material and equipment to improve the subject property. Affidavit of Casey Daniels in Support of Motion for Summary Judgment, ¶ 2 (hereinafter "Daniels Affidavit").

2. Extreme Line performed under the contract by providing labor, material, and equipment to improve the subject property. Daniels Affidavit, ¶ 3.

3. Extreme Line commenced work on the subject property on June 20, 2006. Daniels Affidavit, ¶ 4.

4. The last date on which Extreme Line performed any labor or provided any material in connection with the Property, or improvements thereto, was November 27, 2007. Daniels Affidavit, ¶ 5 and Exhibit B.

5. Extreme Line has not been fully compensated for the labor, material and equipment it provided to improve the subject property. Daniels Affidavit, ¶ 6 and Exhibit B.

6. The principal amount of \$297,592.40 remains owed to Extreme Line after deduction of all just credits and offsets. Daniels Affidavit, Exhibit B.

7. On December 19, 2007 Extreme Line recorded a Notice and Claim of Lien as Instrument Number 2007081815 (hereinafter "Claim of Lien"), in the amount of \$297,592.40, in the Office of the Canyon County Recorder. Daniels Affidavit, ¶ 7 and Exhibit B.

8. On December 22, 2006 Integrated Financial Associates, Inc. (hereinafter "IFA") recorded a mortgage, Instrument No. 2006100908 (hereinafter "Mortgage"), in the amount of

\$4,000.000.00 in the office of the Canyon County Recorder. Affidavit of William L. Smith in Support of Motion for Summary Judgment, (hereinafter “Smith Affidavit”), ¶ 2 and Exhibit E, Response to Admission No. 1, page 4.

IV. DISCUSSION AND ANALYSIS

A materialmen’s right to lien is established by statute in Idaho Code, Section 45-501 which states in pertinent part:

[E]very person performing labor upon, or furnishing materials to be used in the construction, alteration, or repair...or [who] otherwise improves any land...has a lien upon the same for the work or labor done or professional services or materials furnished.

IDAHO CODE, § 45-501 (West 2009). To validly exercise this right to lien the claim must be filed within ninety (90) days after the completion of the labor or services, or furnishing of materials.

IDAHO CODE, § 45-507 (West 2009). Extreme Line validly exercised their right to lien the Property by recording a Notice and Claim of Lien on December 19, 2007, well prior to the expiration of the ninety (90) day period to record such a lien, which began after its work on the Property was completed on November 27, 2007. Daniels Affidavit, ¶¶ 5 and 7.

“The effective date of the lien is the date on which the lienor commenced to work or furnish[ed] materials.” *In the Matter of Design Builders, Inc.*, 18 B.R. 392 at 394 (Idaho, 1981). Extreme Line commenced work on the Property on June 20, 2006. Daniels Affidavit, ¶ 4. Therefore, the priority date of Extreme Line’s Claim of Lien in relation to all others claiming an interest in the property is June 20, 2006.

Conversely, IFA recorded its mortgage on the property on December 22, 2006. Smith Affidavit, ¶ 2 and Exhibit E, Response to Admission No. 1, page 4. The applicable Idaho law for

determining priority between a mechanic's lien and a mortgage is Idaho Code, Section 45-506, which states:

The liens provided for in this chapter (mechanic's liens)... are preferred to any lien, mortgage or other encumbrance, which may have attached subsequent to the time when the building, improvement or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or materials or professional services were commenced to be furnished.

IDAHO CODE, § 45-506 (West 2009). Therefore, pursuant to Idaho Code, Section 45-506 Extreme Line's Claim of Lien is senior in priority to IFA's mortgage because Extreme Line commenced work on the Property prior to IFA's recordation of their mortgage on December 22, 2006. Therefore, no genuine issue material fact exists that Extreme Line's Claim of Lien is valid and senior in priority to IFA's mortgage, and Extreme Line's Motion for Summary Judgment should thereby be granted.

V. CONCLUSION

Accordingly, Extreme Line respectfully requests that the Court enter an order granting Extreme Line's Motion for Summary Judgment and establishing that Extreme Line's Claim of Lien is valid and senior in priority to IFA's mortgage.

DATED, this 14 day of October, 2009.

SMITH HORRAS, P.A.

By: 

William L. Smith

Attorney for Extreme Line Logistics, Inc.

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 5561 N. Glenwood St, Suite B, P.O. Box 140857, Boise, ID certifies that on the 14 day of October, 2009, he caused a true and correct copy of the foregoing document to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Michael O. Roe	Hand Delivered	<input type="checkbox"/>
MOFFAT, THOMAS, BARRETT, ROCK &	U.S. Mail	<input type="checkbox"/>
FIELDS, CHTD.	Fax	<input checked="" type="checkbox"/>
P.O. Box 829	Email	<input type="checkbox"/>
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Facsimile: (208) 385-5384		
<i>Attorney for Integrated Financial Associates, Inc., Geneva Equities, LLC, and Certain Other Named Defendants</i>		

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P.O. Box 837	Email	<input type="checkbox"/>
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<i>Attorney for L222-1 ID Summerwind, LLC, L222-2 ID Summerwind, LLC, L222-3 ID Summerwind, LLC, and Union Land Company, LLC</i>		

Thomas E. Dvorak	Hand Delivered	<input type="checkbox"/>
Elizabeth M. Doick	U.S. Mail	<input type="checkbox"/>
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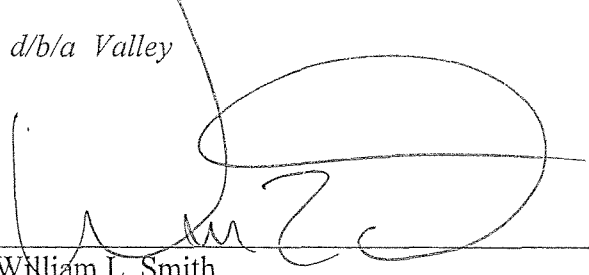
Tom Mehiel, President
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*Pro Se Defendant, Tom Mehiel, d/b/a Valley
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FILED
A.M. 5:22 P.M.

OCT 14 2009

CANYON COUNTY CLERK
J DRAKE, DEPUTY

Attorneys for Extreme Line Logistics, Inc.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE)
RIVER, an Oregon corporation doing business)
as Knife River,)

Case No. CV 08 4251-C

Plaintiff,)

v.)

L222-1 ID SUMMERWIND, LLC, an Idaho)
Limited Liability Company, et. al.,)

**AFFIDAVIT OF WILLIAM L.
SMITH IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Defendants.)

HAP TAYLOR & SONS, INC. d/b/a KNIFE)
RIVER, an Oregon corporation doing business)
as Knife River,)

Case No. CV 08 4252-C
(Consolidated with Case No.
CV 08 4251-C)

Plaintiff,)

v.)

L222-1 ID SUMMERWIND, LLC, an Idaho)
Limited Liability Company, et. al.,)

Defendants.)

CONGER MANAGEMENT GROUP, INC an)
Idaho corporation,)

Case No. CV 08 11321-C
(Consolidated with Case No.
CV 08 4251-C)

Plaintiff,)

AFFIDAVIT OF WILLIAM L. SMITH IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT -1-

v.

L222-1 ID SUMMERWIND, LLC, an Idaho
Limited Liability Company, et. al.,

)
)
)
)

Defendants.

STATE OF IDAHO)
)ss.
County of Ada)

WILLIAM L. SMITH, being first duly sworn on oath, depose and say:

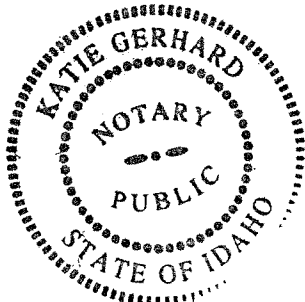
1. I am the attorney of record for Defendant Extreme Line Logistics (hereinafter "Extreme Line") and have personal knowledge of the facts and matters set forth herein.

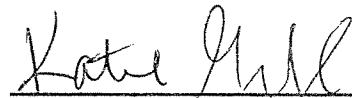
2. On or about July 16, 2009 my office served upon counsel for Integrated Financial Associates, Inc. ("IFA") a set of discovery, which included four requests for admissions. On August 24, 2009, IFA responded with Defendant Integrated Financial Associates, Inc.'s Response and Answer to Defendant Extreme Line Logistics, Inc.'s First Set of Request for Admissions and Interrogatories. A true and correct copy of said document is attached hereto as Exhibit "E" and incorporated herein by reference as if set forth in full.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


William L. Smith

Subscribed and sworn to before me this 14th day of October, 2009.




Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: MARCH 27, 2015

AFFIDAVIT OF WILLIAM L. SMITH IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT -2-

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 5561 N. Glenwood St, Suite B, P.O. Box 140857, Boise, ID certifies that on the 14 day of October, 2009, he caused a true and correct copy of the foregoing document to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

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<i>Attorney for Integrated Financial Associates, Inc., Geneva Equities, LLC, and Certain Other Named Defendants</i>		

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Tom Mehiel, President
Valley Hydro, Inc.

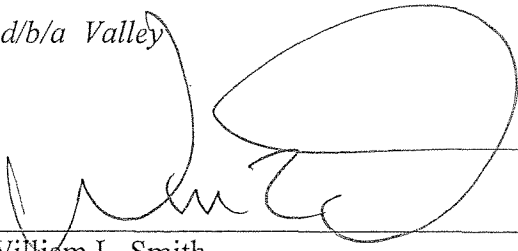
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*Pro Se Defendant, Tom Mehiel, d/b/a Valley
Hydro, Inc.*



William L. Smith

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23690.0002

Attorneys for Defendants Integrated Financial Associates, Inc.,
Geneva Equities, LLC, and Certain Other Named Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC., d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; L222-2 ID
SUMMERWIND, LLC, an Idaho limited
liability company; L222-3 ID
SUMMERWIND, LLC, an Idaho limited
liability company; UNION LAND
COMPANY, LLC, an Idaho limited liability
company; REXIUS FOREST BY-
PRODUCTS, INC. d/b/a REXIUS, an Oregon
corporation doing business as Rexius;
PARADISE EXCAVATION &

Case No. CV08-4251C

**DEFENDANT INTEGRATED
FINANCIAL ASSOCIATES, INC.'S
RESPONSE AND ANSWER TO
DEFENDANT EXTREME LINE
LOGISTICS, INC.'S FIRST SET OF
REQUEST FOR ADMISSIONS AND
INTERROGATORIES**

**DEFENDANT INTEGRATED FINANCIAL ASSOCIATES, INC.'S RESPONSE
AND ANSWER TO DEFENDANT EXTREME LINE LOGISTICS, INC.'S FIRST
SET OF REQUEST FOR ADMISSIONS AND INTERROGATORIES - 1**



CONSTRUCTION, INC., an Idaho corporation; PMA, INC., an Idaho corporation; RIVERSIDE, INC., an Idaho corporation; STANLEY CONSULTANTS, INC., an Idaho corporation; CONGER MANAGEMENT GROUP, INC., an Idaho corporation; DENNIS PHIPPS WELL DRILLING, INC., an Idaho corporation; TRADITIONAL SPRINKLERS AND LANDSCAPING, INC., an Idaho corporation; EXTREME LINE LOGISTICS, INC. d/b/a EXTREME LINE CONSTRUCTION, INC., an Idaho corporation doing business as Extreme Line Construction, Inc.; DAVID A. HUNEMILLER, INC., an Idaho corporation; SPF WATER ENGINEERING, LLC, an Idaho limited liability company; MATERIALS TESTING & INSPECTION, INC., an Idaho corporation; GENEVA EQUITIES, LLC, an Idaho limited liability company; DANA McDANIEL KANNE SEP. PROPERTY TR. U/A/D 4/27/1999; HENRY B. SOLOWAY 1991 IRREVOCABLE TRUST; HENRY B. SOLOWAY 2006 REVOCABLE FAMILY TRUST; JOHN R. GIBBS TRUST; KARIN B. SOLOWAY TRUST DTD 4/25/96; KING FUTT'S FUN FUNDS, LLC; MILTON BOZANIC; STEVEN E. CLAYTON; RUTH D. MILLE LIVING TRUST; JON A. GRIFFIN SR. AND JUDY A. GRIFFIN REVOCABLE TRUST; MONROE FAMILY TRUST; NEVADA TRUST COMPANY C/F DARYL ALTERWITZ, IRA; ANNETTE PARKER TRUST; JA KRETSCH FINANCIAL RETIREMENT PLAN; JASON PARKER; KARLI PARKER; RENE C. BLANCHARD TRUST DTD 2/14/73; CARYL J. GUTH TRUST; DAVID G. STIBOR D.D.S. LTD. DBPP; DENNIS KYLE; DVS FAMILY LIMITED PARTNERSHIP; LIBMAN FAMILY TRUST; THE CATHY A. KAMMEYER LIVING TRUST DTD 9/25/91; DALE WYNN LIVING TRUST; LYAN, LLC;

PINNACLE HOLDING ENTERPRISES, LLC; ROBERT R. BELLIVEAU TRUST; RUTH OSHINS REVOCABLE FAMILY TRUST; INTEGRATED FINANCIAL ASSOCIATES, INC.; STANLEY PAHER TRUST; ANNETTE PARKER TRUST; KIT & KAREN GRASKI, JTWRS; PATRICK FLANAGAN TRUST; RICHARD & HELEN CAROL ELLIS, JTWRS; ROBERT R. BELLIVEAU TRUST; STERLING TRUST CO. CUST. FBO PATRICK MICHAEL FLANAGAN, IRA; ANTHONY C. & LINDA A. PUSATERI FAMILY TRUST; ANTHONY DELIA TRUST; ARTHUR SNYDER; BEATRICE S. BERNSTEIN REV. FAM. TR. FBO CAROL B. OSHINS; BLANCHE M. CRAIG; CARDWELL CHARITABLE TRUST; CHAD & TAMARA VELLINGA FAMILY TRUST; DEBORAH FRIEDMAN; DEBORAH STOUT TRUST; DeETTE CARTER REVOCABLE TRUST; DI BLASE 1979 TRUST; DUKE MARKETING, INC.; EDWARD H. OSHINS REVOCABLE FAMILY TRUST; EVE JEANOS; FRANK R. NOLIMAL & ROBIN F. NOLIMAL FAMILY TRUST; GOLDEN LEGACY, LLC; HEATHER A. RALSTON TRUST; JACQUELYN A. MCDANIEL; JAMES AND REBA CARDWELL FAMILY TRUST; JANET B. GLOVER; JANIE FRIEDMAN TRUST; JAY A. STEAD; LOUISE A. STEAD; JOAN NEIMAN REVOCABLE TRUST; JOHN DAVID KRUGER FAMILY TRUST; JUDITH TROTTER OR BOB CHARLES TROTTER; KATHRYN BRYANT LIVING TRUST; LAGUNA CONSULTANTS, LLC PROFIT SHARING PLAN; LARRY CARTER TRUST; LARRY CARTER; LORI CARTER; DAVID CARTER; MARGUERITE E. LUCE LIVING TRUST; MARILENE B. NEVINS LIVING TRUST; MARK HEESE; MARSHALL SHIELDS IRA; MEENA P. VOHRA; MICHAEL AND GERI RUMBOLZ

LIVING TRUST 2002; MUSTAPHA ASSI
REV. LIVING TRUST 6/23/03; PHILIP &
ADELE ENGEL FAMILY TRUST; PRAVIN
P. BAKRANIA AND VEENA P.
BAKRANIA LIVING TRUST; PRISM
MANAGEMENT PENSION TRUST;
RALSTON FAMILY TRUST; RAY W.
MILLISOR TRUST DTD 1/15/92; RICHARD
A. OSHINS 1995 REVOCABLE TRUST;
RONALD J. FADEL M.D. IRA; RUTH
OSHINS REVOCABLE FAMILY TRUST;
SCHWARTZ FAMILY TRUST; SHARON
GEORGE (FRIEDMAN); SS TRUST; THE
CHERRY TRUST; THE LeMAIRE FAMILY
TRUST; TONI LYNN PUSATERI;
VICTORIA C. PICKARD-BROWN TRUST;
WOMEN'S CARE OB/GYN LTD.; and ALL
PERSONS IN POSSESSION OR CLAIMING
ANY RIGHT TO POSSESSION,

Defendants.

COMES NOW defendant Integrated Financial Associates, Inc. ("IFA"), by and
through undersigned counsel, and responds to and answers Defendant Extreme Line Logistics,
Inc.'s First Set of Request for Admissions and Interrogatories as follows:

REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Please admit the Mortgage was recorded
in the land records of Ada County on December 22, 2006.

RESPONSE NO. 1: Admit.

REQUEST FOR ADMISSION NO. 2: Please admit that the document attached
hereto as Exhibit "B" is a true and correct copy of the Mortgage.

RESPONSE NO. 2: Admit.



REQUEST FOR ADMISSION NO. 3: Please admit that Extreme Line's Claim of Lien is senior in priority to the Mortgage.

RESPONSE NO. 3: Deny.

REQUEST FOR ADMISSION NO. 4: Please admit Extreme Line commenced work on June 20, 2006.

RESPONSE NO. 4: Deny.

INTERROGATORIES

INTERROGATORY NO. 1: If any of your responses to any of these admissions is anything other than an unqualified "Admit," please thoroughly explain each and every detail and set forth each piece of evidence that may support your response.

ANSWER NO. 1: IFA denies Request for Admission No. 3 on the grounds that Extreme Line's Claim of Lien is invalid and unenforceable and cannot, therefore, be superior to any interest in the Property held by IFA. Facts supporting this denial include, but are not necessarily limited to the following:

1. Extreme Line's Claim of Lien was filed on December 19, 2007.
2. Extreme Line did not commence an action to foreclose on its claim of lien until it filed Extreme Line Logistics, Inc.'s Answer, Counterclaim and Crossclaim on July 24, 2008.

IFA denies Request for Admission No. 4 on the grounds that it does not have sufficient information upon which to form a belief regarding the matters set forth in Request for Admission No. 4.

In answering Interrogatory No. 1, IFA states that discovery in this matter is still ongoing and reserves the right to supplement this Answer No. 1 if necessary.

DATED this 24th day of August, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By TRC AFB
Rebecca A. Rainey – Of the Firm
Attorneys for Defendants
Integrated Financial Associates, Inc.,
Geneva Equities, LLC, and
Certain Other Named Defendants

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

WILLIAM DYER, being duly sworn, deposes and says:

He is the _____ of INTEGRATED FINANCIAL ASSOCIATES, INC., the corporation named in the above-entitled proceeding and is authorized to make this verification in its behalf.

He has read the foregoing DEFENDANT INTEGRATED FINANCIAL ASSOCIATES, INC.'S RESPONSE AND ANSWER TO DEFENDANT EXTREME LINE LOGISTICS, INC.'S FIRST SET OF REQUEST FOR ADMISSIONS AND INTERROGATORIES, knows the contents thereof, and the same are true to the best of his knowledge, information, and belief.

William Dyer

SUBSCRIBED AND SWORN to before me this _____ day of August, 2009.

NOTARY PUBLIC FOR _____
Residing at _____
My Commission Expires _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 2009, I caused a true and correct copy of the foregoing **DEFENDANT INTEGRATED FINANCIAL ASSOCIATES, INC.'S RESPONSE AND ANSWER TO DEFENDANT EXTREME LINE LOGISTICS' FIRST SET OF REQUEST FOR ADMISSIONS AND INTERROGATORIES** to be served by the method indicated below, and addressed to the following:

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Summerwind, LLC, L222-3 ID Summerwind,
LLC, and Union Land Company, LLC

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Rebecca A. Rainey

OCT 09 2009

F I L E D
A.M. *2* P.M.

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Facsimile: 1-800-881-6219

OCT 14 2009

CANYON COUNTY CLERK
J DRAKE, DEPUTY

Attorneys for Extreme Line Logistics, Inc.

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

v.

L222-1 ID SUMMERWIND, LLC, an Idaho
Limited Liability Company, et. al.,

Defendants.

Case No. CV 08 4251-C

**AFFIDAVIT OF CASEY DANIELS
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

v.

L222-1 ID SUMMERWIND, LLC, an Idaho
Limited Liability Company, et. al.,

Defendants.

Case No. CV 08 4252-C
(Consolidated with Case No.
CV 08 4251-C)

CONGER MANAGEMENT GROUP, INC an
Idaho corporation,

Plaintiff,

Case No. CV 08 11321-C
(Consolidated with Case No.
CV 08 4251-C)

AFFIDAVIT OF CASEY DANIELS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT -1-

v.)
)
L222-1 ID SUMMERWIND, LLC, an Idaho)
Limited Liability Company, et. al.,)

Defendants.

STATE OF IDAHO)
)ss.
County of Ada)

CASEY DANIELS, being first duly sworn on oath, depose and say:

1. I am the President of Extreme Line Logistics, Inc. (hereinafter "Extreme Line") and have personal knowledge of the facts and matters set forth herein.

2. Extreme Line entered into a contract with Union Land Company to provide labor, material and equipment to improve the subject property. The subject property is more particularly described as Exhibit "A," and attached hereto and fully incorporated herein by reference as if set forth in full (hereinafter "Property").

3. Extreme Line performed under the contract by providing labor, material, and equipment to improve the subject property.

4. Extreme Line commenced work on the subject property on June 20, 2006.

5. The last date on which Extreme Line performed any labor or provided any material in connection with the Property, or improvements thereto, was November 27, 2007.

6. Extreme Line has not been fully compensated for the labor, material and equipment it provided to improve the subject property.

7. On December 19, 2007 Extreme Line recorded a Notice and Claim of Lien as Instrument Number 2007081815 (hereinafter "Claim of Lien"), in the amount of \$297,592.40, in the

AFFIDAVIT OF CASEY DANIELS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT -2-

Office of the Canyon County Recorder. A true and correct copy of the Claim of Lien is attached hereto as Exhibit "B" and fully incorporated herein by reference as if set forth in full.

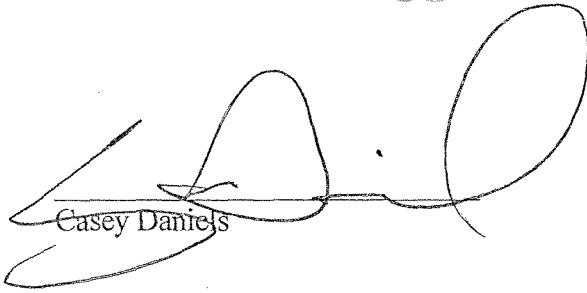
8. On December 22, 2006 Integrated Financial Associates, Inc. (hereinafter "IFA") recorded a mortgage, Instrument No. 2006100908 (hereinafter "Mortgage"), in the amount of \$4,000,000.00 in the office of the Canyon County Recorder. A true and correct copy of IFA's Mortgage is attached hereto as Exhibit "C" and fully incorporated herein by reference as if set forth in full.

9. On or about April 18, 2008 First American Title Insurance Co. prepared a Litigation Guarantee (hereinafter "Litigation Guarantee") for the subject property showing IFA's mortgage on the Property was duly recorded on December 22, 2006. A true and correct copy of the Litigation Guarantee is attached hereto as Exhibit "D" and fully incorporated herein by reference as if set forth in full.

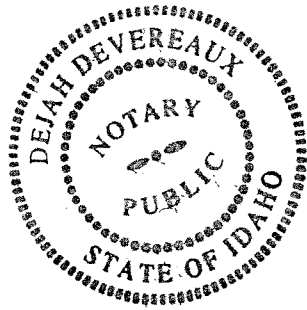
10. Extreme Line's claim of lien on the Property is senior and has priority over IFA's Mortgage on the Property.

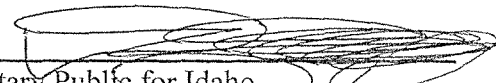
11. IFA's mortgage on the Property is junior and subservient to Extreme Line's claim of lien on the Property.

FURTHER THE AFFIANT SAYETH NAUGHT.


Casey Daniels

Subscribed and sworn to before me this 28th day of September, 2009.




Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: 1/26/2013

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 5561 N. Glenwood St, Suite B, P.O. Box 140857, Boise, ID certifies that on the 14 day of ^{October} ~~June~~, 2009, he caused a true and correct copy of the foregoing document to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Michael O. Roe	Hand Delivered	<input type="checkbox"/>
MOFFAT, THOMAS, BARRETT, ROCK &	U.S. Mail	<input type="checkbox"/>
FIELDS, CHTD.	Fax	<input checked="" type="checkbox"/>
P.O. Box 829	Email	<input type="checkbox"/>
Boise, ID 83701		
Facsimile: (208) 385-5384		
<i>Attorney for Integrated Financial Associates, Inc., Geneva Equities, LLC, and Certain Other Named Defendants</i>		

David T. Krueck	Hand Delivered	<input type="checkbox"/>
TROUT JONES GLEDHILL FUHRMAN, P.A.	U.S. Mail	<input type="checkbox"/>
225 N. 9 th St., Suite 800	Fax	<input checked="" type="checkbox"/>
P.O. Box 1097	Email	<input type="checkbox"/>
Boise, ID 83701		
Facsimile: (208) 331-1529		
<i>Attorney for Hap Taylor & Sons, Inc.</i>		

David E. Wishney	Hand Delivered	<input type="checkbox"/>
LAW OFFICES OF DAVID WISHNEY	U.S. Mail	<input type="checkbox"/>
300 W. Myrtle St., Suite 200	Fax	<input checked="" type="checkbox"/>
P.O. Box 837	Email	<input type="checkbox"/>
Boise, ID 83701		
Facsimile: (208) 342-5749		
<i>Attorney for L222-1 ID Summerwind, LLC, L222-2 ID Summerwind, LLC, L222-3 ID Summerwind, LLC, and Union Land Company, LLC</i>		

Thomas E. Dvorak	Hand Delivered	<input type="checkbox"/>
Elizabeth M. Doick	U.S. Mail	<input type="checkbox"/>
GIVENS, PURSLEY, LLP	Fax	<input checked="" type="checkbox"/>
P.O. Box 2720	Email	<input type="checkbox"/>
Boise, ID 83701		
Facsimile: (208) 338-1300		
<i>Attorney for Stanley Consultants, Inc.</i>		

William G. Dryden
Matthew L. Walters
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, ID 83701
Facsimile: (208) 384-5844
Attorneys for Rexius Forest By-Products, Inc.

Hand Delivered
U.S. Mail
Fax
Email

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Frederick A. Baston
Jane M. Yates
GLEAVES SWEARINGEN POTTER &
SCOTT LLP
P.O. Box 1147
975 Oak St., Suite 800
Eugene, OR 97440
Facsimile: (541) 345-2034
Attorneys for Rexius Forest By-Products, Inc.

Hand Delivered
U.S. Mail
Fax
Email

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Donald Lojeck
LOJEK LAW OFFICES CHTD.
1199 Main St.
P.O. Box 1712
Boise, ID 83701
Facsimile: (208) 345-0050
Attorney for PMA, Inc.

Hand Delivered
U.S. Mail
Fax
Email

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☐
☒
☐

Samuel A. Diddle
EBERLE, BERLIN, KADING, TURNBOW &
MCKLVEEN CHTD.
1111 West Jefferson Street, Suite 530
P.O. Box 1368
Boise, ID 83701
Facsimile: (208) 344-8542
Attorney for Conger Management Group, Inc.

Hand Delivered
U.S. Mail
Fax
Email

☐
☐
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☐

David E. Kerrick
1001 Blaine Street
P.O. Box 44
Caldwell, ID
Facsimile: (208) 459-4573
*Attorney for Michael W. Benedick & Carol L.
Benedick*

Hand Delivered
U.S. Mail
Fax
Email

☐
☐
☒
☐

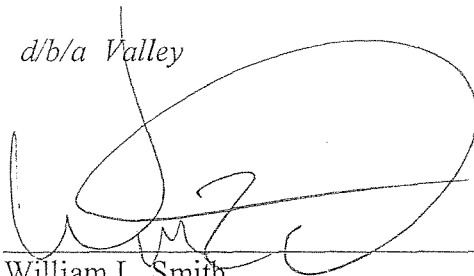
Tom Mehiel, President
Valley Hydro, Inc.
1904 E. Beech Street
Caldwell, ID 83605

Facsimile: (208) 454-2706

*Pro Se Defendant, Tom Mehiel, d/b/a Valley
Hydro, Inc.*

Hand Delivered
U.S. Mail
Fax
Email

☐
☐
☒
☐



William L. Smith

EXHIBIT "A"

SEE EXHIBIT "A" ATTACHED

EXHIBIT "A"

PARCEL 1

All that part of the East half of the Southeast quarter lying South and West of the centerline of the Mora Canal in Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho.

EXCEPTING THEREFROM:

Beginning at a point on the South boundary line of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho, 1,020 feet West of the Southeast corner of said Section 32; thence West along the South boundary line of said Section 32, a distance of 270 feet; thence North and parallel to the East boundary line of said Section 32, a distance of 150 feet; thence East and parallel to the South boundary line of said Section 32, a distance of 270 feet; thence South and parallel to the East boundary line of said Section 32, a distance of 150 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at a point on the South boundary line of said Section 32, 615 feet West of the Southeast corner of said Section 32; thence West along the South boundary line of said Section 32, a distance of 405 feet; thence North and parallel to the East boundary line of said Section 32, a distance of 350 feet; thence East and parallel to the South boundary line of said Section 32, a distance of 405 feet; thence South and parallel to the East boundary line of said Section 32, a distance of 350 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

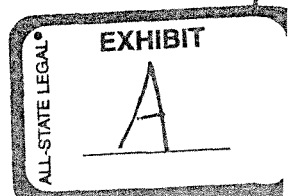
Beginning at a point on the South boundary line of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho, 235 feet West of the Southeast corner of said Section 32; thence West along the South boundary line of said Section 32, a distance of 150 feet; thence North and parallel to the East boundary line of said Section 32, a distance of 350 feet; thence East and parallel to the South boundary line of said Section 32, a distance of 350 feet; thence South and parallel to the East boundary line of said Section 32, a distance of 350 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Southeast corner of said Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence West and following the South boundary of Section 32, a distance of 165 feet; thence North and parallel to the East boundary of Section 32, a distance of approximately 580 feet to the centerline of the Mora Canal; thence following the centerline of the Mora Canal in a Southeast direction to the East boundary of Section 32; thence South and following the East boundary of Section 32 approximately 505 feet to the Southeast corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho, the POINT OF BEGINNING.

AND EXCEPTING THEREFROM:

Beginning at a point 1,615 feet West of the Northeast corner of the Northeast quarter of the Southeast quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South on a line parallel with the East boundary line of said Northeast quarter of the Southeast quarter, a distance of 100 feet, more or less, to the centerline of Mora Canal; thence



LEGAL DESCRIPTION - EXHIBIT "A"

EXCEPTING THEREFROM:

Beginning at a point on the South boundary of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho, 1,350 feet West of the Southeast corner of said Section 32; thence continuing West along the South boundary line of said Section 32, a distance of 330 feet; thence North and parallel to the East boundary line of said Section 32, a distance of 350 feet; thence East and parallel to the South boundary line of said Section 32, a distance of 336 feet; thence South and parallel to the East boundary line of said Section 32, a distance of 350 feet to the PLACE OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Southeast corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South $89^{\circ}57'14''$ West, a distance of 1,885.00 feet along the Southerly line of said Section 32 to a point, the REAL POINT OF BEGINNING; thence North $0^{\circ}03'32''$ East and parallel to the Easterly section line of said Section 32 between the Southeast section corner and the East quarter corner, a distance of 350.01 feet to a point; thence South $89^{\circ}57'08''$ West, a distance of 350.64 feet to a point; thence South $0^{\circ}02'45''$ East, a distance of 350.00 feet to a point on the Southerly line of said Section 32; thence North $89^{\circ}57'14''$ East, a distance of 350.00 feet along the Southerly line of the section to a point, the REAL POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Southeast corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South $89^{\circ}57'14''$ West, a distance of 2,230.00 feet along the Southerly line of said Section 32 to a point, the REAL POINT OF BEGINNING; thence South $89^{\circ}57'14''$ West, a distance of 350.00 feet along the section line to a point; thence North $0^{\circ}02'46''$ East, a distance of 350.00 feet to a point; thence North $89^{\circ}57'15''$ East, a distance of 350.00 feet to a point; thence South $0^{\circ}02'46''$ East, a distance of 350.00 feet to a point, the REAL POINT OF BEGINNING.

PARCEL IIB

The Northwest quarter of the Southeast quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho.

(continued)

LEGAL DESCRIPTION - EXHIBIT "A"

EXCEPTING THEREFROM:

Beginning at a point 1,635 feet West of the Northeast corner of the Northeast quarter of the Southeast quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South on a line parallel with the East boundary line of said Northeast quarter of the Southeast quarter, a distance of 100 feet, more or less, to the centerline of Mora Canal; thence Southeasterly along the centerline of said Mora Canal to a point 1,170 feet West of the East boundary line of said Northeast quarter of the Southeast quarter; thence North on a line parallel with the East boundary line of said Northeast quarter of the Southeast quarter; thence West along said North boundary line to the POINT OF BEGINNING.

PARCEL IXX

The Southwest quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho.

EXCEPTING THEREFROM:

Beginning at the South quarter corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South 89°45'00" West along the section line, a distance of 770.00 feet to the REAL POINT OF BEGINNING; thence South 89°45'00" West along the section line, a distance of 504.88 feet to a point; thence North 0°15'00" West, a distance of 350.00 feet to a point; thence North 89°45'00" East, a distance of 504.88 feet to a point; thence South 0°15'00" East, a distance of 350.00 feet to the REAL POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the South quarter corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South 89°45'00" West along the section line, a distance of 230.00 feet to the REAL POINT OF BEGINNING; thence South 89°45'00" West along the section line, a distance of 540.00 feet to a point; thence North 0°15'00" West, a distance of 350.00 feet to a point; thence North 89°45'00" East, a distance of 540.00 feet to a point; thence South 0°15'00" East, a distance of 350.00 feet to the REAL POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Southeast corner of the Southwest quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; running thence West along the South boundary line of said Southwest quarter, a distance of 229.77 feet; running thence North at right angles, a distance of 150 feet; running thence East at right angles, a distance of 229.77 feet; running thence South along the East boundary line of said Southwest quarter, a distance of 350 feet to the POINT OF BEGINNING.

(continued)

Northeasterly along the centerline of said Mora Canal to a point 1,170 feet West of the East boundary line of said Northeast quarter of the Southeast quarter; thence North on a line parallel with the East boundary line of said Northeast quarter of the Southeast quarter; thence West along said North to boundary line to the POINT OF BEGINNING.

PARCEL IIA

The Southwest quarter of the Southeast quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho.
(continued)

LEGAL DESCRIPTION - EXHIBIT "A"

EXCEPTING THEREFROM:

Beginning at a point 900 feet North of the Southwest corner of the Southwest quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; running thence East on a line parallel with the South boundary line of said Southwest quarter, a distance of 1,035 feet; running thence North at right angles, a distance of 200 feet, more or less, to the centerline of Mora Canal as the same is now located; running thence
Northwesterly along the centerline of said Mora Canal to its intersection of the West boundary line of said Southwest quarter; running thence
South along the West boundary line of said Southwest quarter, a distance of 730 feet, more or less, to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Northwest corner of the Southwest quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence
East on the North boundary of the Southwest quarter of Section 32, a distance of 363 feet; thence
South parallel to the West boundary of the Southwest quarter of Section 32, to the centerline of the High Line Canal as it now exists; thence
following the centerline of the High Line Canal in a Southwesterly direction to the intersection of the West boundary of the Southwest quarter of Section 32; thence
North along the said West boundary to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Southeast corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence
West and following the South boundary of said Section 32, a distance of 2,640.70 feet to a point, the REAL POINT OF BEGINNING; thence
West along the South boundary of said Section 32, a distance of 260.00 feet, to a point; thence
North at right angles, a distance of 350.00 feet to a point; thence
East and parallel to the South boundary of said Section 32, a distance of 260.00 feet to a point; thence
South at right angles, a distance of 350.00 feet to the REAL POINT OF BEGINNING.

Wilder Irrigation District confirms water rights are attached to the 3 parcels and will remain with the property as long as irrigation fees are paid current.

2007081815

REQUEST Hamilton Nicholson
TYPE lien FEE 18

RECORDED

2007 DEC 19 PM 3 53

WILLIAM H. HURST
CANYON COUNTY RECORDER

NOTICE AND CLAIM OF LIEN

NOTICE IS HEREBY GIVEN that Extreme Line Construction, Inc. hereinafter referred to as "Claimant", claims a lien as hereinafter provided pursuant to Idaho Code Sections 45-501 *et seq.* The Claimant represents as follows:

1. Claimant provided labor, excavating equipment, and/or material, among other things, in the improvement of the subject property.

2. The subject property is situated in Canyon County, Idaho, and is more particularly described as follows:

See Exhibit "A" attached hereto and incorporated herein by this reference.

3. The lien claimed hereby is sought against the real property described herein, as well as all improvements situated thereon.

4. The reputed owner and/or the legal owner of the subject property is Union Land Company, LLC, whose last known address is 1059 E. Iron Eagle Drive, Ste. B, Eagle, ID 83616; and/or Victoria Laidlaw whose last known address is 10082 W Rhett St, Boise, ID 83709; and/or Gerald Aebischer whose last known address is 17720 Plum Rd. Caldwell, ID 83607; and/or Status Homes, Inc. whose last known address is 1059 E. Iron Eagle Dr., Ste. 155, Eagle, ID 83616; and/or Donald and EmmaJeanne Youngblood whose last known address is PO Box 20250, Keizer, OK 97307; and/or Glenn D. Scott whose last known address is 4183 SE Augusta Loop, Gresham, OR. 97080-8426; and/or Randall W. Benson whose last known address is 1401 Shady Ln., Emmett, ID 83617; and/or Jon M. Zarneke whose last known address is 3480 W. Birdie Ct., Meridian, ID 83646; and/or Vallivue School District #139 whose last known address is 5207 S. Montana Ave., Caldwell, ID 83607.

5. The labor and/or material mentioned herein were provided at the request of John Tansey and/or Jim Conger and/or Rick Brown of Conger Management Group, Inc and/or Kevin Harris of Union Land Company, LLC and/or Ryan Vows and/or Pat Cook of Rexius.

6. The Claimant commenced performance on June 20, 2006. The last date on which Claimant performed any labor or provided any material in connection with the real property mentioned herein, or improvements thereto, was November 27, 2007.

7. The Claimant fully performed all services it was required to furnish until such time as Union Land Company and/or Rexius failed and/or refused to pay claimant for completed work. Less than 90 days have elapsed since work ceased by the Claimant.

8. Claimant is owed, after deduction of all just credits and offsets, two hundred ninety seven thousand five hundred ninety two and 40/100's dollars (\$297,592.40) for labor and/or material provided as set forth hereinabove, plus accruing interest and late charges.

9. Pursuant to Idaho Code Section 45-507, Claimant claims a lien against the above-described property for the amount of two hundred ninety seven thousand five hundred ninety two and

40/100's dollars (\$297,592.40) for labor, excavating equipment, and/or material provided as set forth hereinabove, plus interest, late charges and attorney fees.

10. Pursuant to Idaho Code Section 45-513, Claimant claims attorney's fees for the preparation and filing of this lien against the above-described property in the amount of \$800.

EXTREME LINE CONSTRUCTION, INC.

By: Casey Daniels
Its: President

STATE OF IDAHO)
)ss.

County of Ada)
 Canyon

COMES NOW, CASEY DANIELS, and being first duly sworn upon oath, deposes and states:

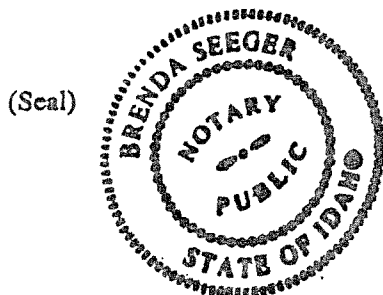
That I am President of the Claimant in the above entitled matter; that the claim contained herein is just; that I have read the within and foregoing Notice Claim of Lien, know the contents thereof, and believe the facts stated therein are true and correct to the best of my knowledge.

Affiant

STATE OF IDAHO)
)ss
County of Canyon)

I, Brenda Seeger, a notary public for the state of Idaho, do hereby certify that on this 19 day of December, 2007, personally appeared before me, CASEY DANIELS, who, being first duly sworn by me, declared that he is the President of Extreme Line Construction, Inc., that he executed the above an foregoing Notice and Claim of Lien and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Brenda Seeger
NOTARY PUBLIC FOR IDAHO

Residence: namah, ID

My Commission Expires: 11/21/2013

17

MORTGAGE

THIS MORTGAGE (the "Mortgage") effective as of December 22, 2006, by L222-1 ID Summerwind, LLC, an Idaho limited liability company, whose address is 1059 E. Iron Eagle Drive, Suite B, Eagle, ID 83616, as grantor (the "Borrower"), and Integrated Financial Associates, Inc., a Nevada corporation, its successors and assigns, whose address is 2810 W. Charleston Ave., Suite 77, Las Vegas, NV 89102, as beneficiary (the "Lender").

RECTALS

A. Borrower is indebted to Lender in the sum of Four Million Dollars (\$4,000,000.00), which indebtedness is evidenced and represented by that certain Note of even date from Borrower to Lender, with final payment due and payable on December 21, 2007 (the Note, together with all substitutions, consolidations, modifications, replacements, restatements, increases, renewals, and extensions thereof, in whole or in part, shall collectively be referred to as the "Note").

B. Lender, as a condition precedent to the extension of credit and the making of the loan evidenced by the Note, has required that Borrower provide Lender with security for the repayment of the indebtedness evidenced by the Note as well as for the performance, observance and discharge by Borrower of various covenants, conditions and agreements made by Borrower to, with, in favor of, and for the benefit of, Lender with respect to such indebtedness and security.

1. Grants of Security

1.1 **Property Granted.** In consideration of and in order to secure the repayment of the indebtedness evidenced and represented by the Note, together with interest, as well as the payment of all sums advanced pursuant to this Mortgage to protect and preserve the Property and the lien and security interest created hereby and all other sums of money secured hereby, as provided below; and to secure the observance, performance, and discharge by Borrower of all covenants, conditions and agreements set forth in the Note, this Mortgage and all other documents and instruments executed and delivered by Borrower to and in favor of Lender for the purpose of further securing the repayment of the indebtedness evidenced and represented by the Note (all of the foregoing obligations are referred to as the "Secured Obligations"), Borrower grants, bargains, sells, alien, releases, conveys, assigns, transfers, pledges, delivers, sets over, hypothecates, warrants, and confirms to Lender, with power of sale, as beneficiary hereunder, subject to the terms and conditions of the Mortgage, all estate, right, title, and interest which Borrower now has or may later acquire in and to the following described properties, rights and interests and all replacements of, substitutions for, and additions thereto (all of which are referred to below as the "Property"):

1.1.1 **Real Property.** The real property in Canyon County, Idaho, described in *Exhibit A* attached hereto and made a part hereof (the "Real Property").

MORTGAGE SECURITY AGREEMENT AND FIXTURE FILING - 1

TRANSMISSION TITLE
REQUEST
NO 073
FEE 5

REQUEST
MAY 07 FEE 57.00

CANON AUTO REORDER
 BY *W. J. Langhorne*
 App

2006 DEC 22 PM 1 56

25000

2006100908

EXHIBIT

ALL-STATE LEGAL

1.1.3 Appurtenances. All tenements, hereditaments, strips and gores of land, rights-of-way, easements, privileges and other appurtenances now or hereafter belonging or in any way appertaining to the Real Property, including, without limitation, all right, title and interest of the Borrower in any after-acquired right, title, interest, remainder or reversion, in and to the beds of any ways, streets, avenues, roads, alleys, passages and public places, open or proposed, in front of, running through, adjoining or adjacent to the Real Property, to the extent owned by Borrower, all minerals, royalties, gas rights, water, water rights, water stock, flowers, shrubs, lawn plants, crops, trees, timber and other emblements now or hereafter located on, under, or above all or any part of the Real Property (the "Appurtenances").

1.1.5 Condemnation Awards. Any and all awards, payments or settlements, including interest thereon, and the right to receive the same, as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, and (c) any other injury, damage or casualty to, taking of, or decrease in the value of, the Property, to the extent of all amounts that may be secured by this Mortgage at the date of any such award or payment, including but not limited to Reasonable Attorneys' Fees (as defined below), costs, and disbursements incurred by Lender in connection with the collection of such award or payment.

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING - 2
RECEIVING

herein expressly excludes any toxic waste or substance deemed hazardous under federal, regional, state, or local laws).

1.1.7 Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Real Property and any part thereof and any improvements or respecting any business or activity conducted on the Real Property and any part thereof and all right, title and interest of Borrower therein and thereafter, including, without limitation, the right to receive and collect any sums payable to Borrower thereafter.

1.2 Assignment of Leases and Rents. Borrower absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Mortgage, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold a portion of the Rents sufficient to discharge all current sums due on the Note, the use in the payment of such sums.

2. Borrower Covenants. Borrower covenants and agrees as follows:

2.1 Payment of Principal and Interest. Borrower shall pay the Note, in accordance with the terms of the Note, promptly at the times, at the place and in the manner that said principal and interest shall become due, and to promptly and punctually pay all other sums required to be paid by Borrower pursuant to the terms of the Note, this Mortgage, the Assignment of Leases, Rents and Profits (the "Assignment") and all other documents and instruments executed as further evidence of, as additional security for, or executed in connection with, the indebtedness evidenced by the Note and secured by this Mortgage are collectively referred to as the "Loan Documents."

2.2 Performance of Other Obligations. Borrower shall perform, comply with, and abide by each and every one of the covenants, agreements and conditions contained and set forth in the Note, this Mortgage, and the other Loan Documents and shall comply with all laws, ordinances, rules, regulations and orders of any governmental authorities having jurisdiction over the Property that now or hereafter affect the Property or requires any alterations or improvements to be made thereon, and shall perform all of its obligations under any covenant, condition, restriction or agreement of record affecting the Property and shall insure that at all times the Property constitutes one or more legal lots capable of being conveyed without violation of any subdivision or plating laws, ordinances, rules or regulations, or other laws relating to the division or separation of real property.

2.3 Payment of Taxes, Assessments and Other Charges. Borrower shall pay all taxes, assessments, and other charges that are or may be hereafter levied or assessed upon or against the Property, when the same shall become due and payable according to law, before the same become delinquent, and before any interest or penalty shall attach thereto. Borrower shall deliver official receipts evidencing the payment of the same to Lender not later than thirty (30) days following

MORTGAGE SECURITY AGREEMENT AND FUTURE FILING - 3
continued

payment. Borrower shall have the right to contest, in good faith, the proposed assessment of ad valorem taxes or special assessments by governmental authorities having jurisdiction over the Property.

2.4 Payment of Liens, Charges and Encumbrances. Borrower shall pay and discharge from time to time when the same shall become due all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a lien, charge or encumbrance upon the Property or any part thereof, or on the rents, issues, income, revenues, profits and proceeds arising therefrom and, in general, to do or cause to be done everything necessary so that the lien of this Mortgage shall be fully preserved, at the cost of Borrower, without expense to Lender. Borrower shall have the right to contest, in good faith and in accordance with applicable laws and procedures, mechanics' and materialmen's liens filed against the Property.

2.5 Payment of Junior Encumbrances. Borrower shall not permit default or delinquency under any lien, imposition, charge or encumbrance against the Property, even though junior and inferior to the lien of this Mortgage.

2.6 Insurance.

2.6.1 Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(a) **Liability Insurance.** Comprehensive general liability insurance, including bodily injury, death and property damage liability insurance, against any and all claims, including all legal liability to the extent insurable and imposed upon Lender and all court costs and attorneys' fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Property in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property but in no event for an aggregate limit of less than \$2,000,000.00.

(b) **Other Insurance.** Such other insurance with respect to the Property against loss or damage of the kinds from time to time customarily insured against and in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property.

2.6.2 All insurance provided for in Subsection 2.6 shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"). All insurers providing insurance required by this Mortgage shall be authorized to issue insurance in the state in which the Property is located. The Policy referred to in Paragraph (a) above shall name Lender as an additional named insured. All Policies described in Subsection 2.6 shall contain (i) a provision that such policies shall not be canceled or terminated, nor shall they expire, without at least thirty (30) days' prior written notice; and (ii) include effective waivers by the insurer of all claims for Insurance Premiums (defined below) against any loss payees, additional insureds and named insureds (other than Borrower).

9.3 If Borrower or any Guarantor shall make an assignment for the benefit of creditors or if Borrower shall generally not be paying its debts as they become due.

5.5 Except for the specific defaults set forth in this Section, any other default under any Loan Document by Borrower, which default is not cured within thirty (30) days after written notice from Lender to Borrower; provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of one hundred twenty (120) days, unless, only in the case of cures that require construction or remedial work, such cure cannot with diligence be completed within such one hundred twenty (120) day period, in which case such period shall be extended for an additional one hundred twenty (120) days.

6.1 Remedies. Upon the occurrence of any Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to the following actions, each of

which may, to the extent permitted by applicable law, be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

6.1.1 Declare the entire unpaid Secured Obligations to be immediately due and payable.

6.1.2 Institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner.

6.1.3 Sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law.

6.1.4 Institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents.

6.1.5 Apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Secured Obligations and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Secured Obligations.

6.1.6 Subject to any applicable law, the license granted to Borrower under Subsection 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereof; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect, and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Secured Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all

6.1.7 Exercises any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower.

6.1.9 Pursue such other remedies as Lender may have under applicable law.

6.2 Application of Proceed. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Lender to the payment of the Secured Obligations in such priority and proportions as Lender in its discretion shall deem proper, subject to any applicable law.

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by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Lender *thereof*.

6.4 Examination of Books and Records. Lender, its agents, accountants and attorneys shall have the right upon default and prior written notice to examine the records, books, management and other papers of Borrower that reflect upon their financial condition, at the Property or at any offices regularly maintained by Borrower. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower, where the books and records are located.

6.5 Other Rights.

6.5.1 The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to enforce this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Secured Obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

6.5.2 The risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief. If any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

6.5.3 Lender may resort for the payment of the Secured Obligations to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Secured Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Mortgage. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

6.6 Lender's Power. Lender may release or recover any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impeding or affecting the lien or priority of this Mortgage, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release or recovery, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other

lienholder. This Mortgage shall continue as a lien and security interest in the remaining portion of the Property. Without affecting the liability of any other person liable for the payment and/or performance of the Obligations and without in any way impairing or affecting the lien or priority of this Mortgage, Lender may, from time to time and without notice (i) release any person so liable; (ii) extend the maturity or alter any of the terms of any Secured Obligation; (iii) grant other indulgences; or (iv) make compositions or other arrangements with debtors in relation thereto.

6.7 **Right of Entry.** Lender and its agents shall have the right upon prior written notice to enter and inspect the Property at all reasonable times upon notice to Borrower.

7. **Usury Savings Clause.** Notwithstanding any provisions in the Note or in this Mortgage to the contrary, the total liability for payments in the nature of interest including but not limited to default interest and late payment charges shall not exceed the limits imposed by the laws of the State of Idaho or, if controlling, the United States relating to maximum allowable charges of interest. Lender shall not be entitled to receive, collect or apply, as interest on the indebtedness evidenced by the Note, any amount in excess of the maximum lawful rate of interest permitted to be charged by applicable law. If Lender ever receives, collects or applies as interest any such excess, such amount that would be excessive interest shall be applied to reduce the unpaid principal balance of the indebtedness evidenced by the Note. If the unpaid principal balance of such indebtedness has been paid in full, any remaining excess shall be paid to Borrower.

8. **Notice.** All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (b) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower: L222-1 ID Summerwind LLC
1059 E. Iron eagle Drive, Suite 155
Eagle, ID 83616

With a copy to: Barclay's North
10515 20th St SE Suite 100
Everett, WA 98203

Attention: Patrick McCourt
Facsimile No.:

If to Lender: Integrated Financial Associates, Inc.
2810 W. Charleston Blvd. Suite 77
Las Vegas, NV 89102

Attn: Bill Dyer
Facsimile: 702 257-0021

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With a copy to:

Attention:
Facsimile No.:

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

9. **Governing Law.** This Mortgage is to be governed by and construed in accordance with the laws of the state where the Property is located and, if controlling, by the laws of the United States and shall be binding upon Borrower, its heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender, its successors and assigns.

10. **Miscellaneous.**

10.1 **Successors and Assigns; Terminology.** The provisions hereof shall be binding upon Borrower and the heirs, personal representatives, successors and assigns of Borrower, and shall inure to the benefit of Lender, its successors and assigns. Where more than one Borrower is named herein, the obligations and liabilities of said Borrower shall be joint and several. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Borrower" shall mean Borrower and/or any subsequent owner or owners of the Property, the word "Lender" shall mean Lender or any subsequent holder or holders of this Mortgage, the word "Note" shall mean Note(s) secured by this Mortgage, and the word "person" shall mean an individual, trust, trust, corporation, partnership or unincorporated association. As used herein, the phrase "Reasonable Attorney's Fees" shall mean fees charged by attorney selected by Lender based upon such attorney's then prevailing hourly rates as opposed to any statutory presumption specified by any statute then in effect in the State of Idaho.

10.2 **Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law.

10.3 **Inapplicable Provision.** If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

10.4 **Attorney's Fees for Enforcement.** Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorney's fees, incurred or paid by Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

10.5 **Modifications.** This Mortgage cannot be changed, altered, amended or modified except by an agreement in writing and in recordable form, executed by both Borrower and Lender.

10.6 **Captions.** The captions set forth at the beginning of the various sections of this Mortgage are for convenience only and shall not be used to interpret or construe the provisions of this Mortgage.

10.7 **Liability.** If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

10.8 **Duplicate Originals; Counterparts.** This Mortgage may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Mortgage may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Mortgage. The failure of any party hereto to execute this Mortgage, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

10.9 **Entire Agreement.** The Note, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Secured Obligations and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto.

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the day and year first written above.

BORROWER

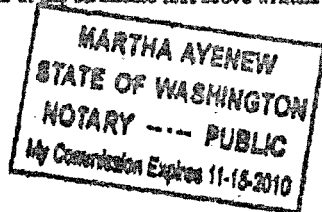
L222-1 ID Summerwind, LLC

by 
Union Land Company LLC, Sole Member by
Tony Kastens, Manager

STATE OF Washington
County of Sheltonish

On this 21 day of December, 2006, before me, the undersigned Notary Public in and for said State, personally appeared Way Kastens, known or identified to me to be the Manager of Union Land Company, LLC, the limited liability company that executed the attached and foregoing document, or the person who executed said instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.



Martha Ayenew
NOTARY PUBLIC, State of Washington
My Commission Expires: 11/15/2010

MORTGAGE, SECURITY AGREEMENT AND FUTURE FILING -14

EXHIBIT "A"

SEE EXHIBIT "A" ATTACHED

EXHIBIT "A"

PARCEL I

All that part of the East half of the Southeast quarter lying South and West of the centerline of the Mora Canal in Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho.

EXCEPTING THEREFROM:

Beginning at a point on the South boundary line of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho, 1,020 feet West of the Southeast corner of said Section 32; thence West along the South boundary line of said Section 32, a distance of 270 feet; thence North and parallel to the East boundary line of said Section 32, a distance of 350 feet; thence East and parallel to the South boundary line of said Section 32, a distance of 270 feet; thence South and parallel to the East boundary line of said Section 32, a distance of 350 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at a point on the South boundary line of said Section 32, 615 feet West of the Southeast corner of said Section 32; thence West along the South boundary line of said Section 32, a distance of 405 feet; thence North and parallel to the East boundary line of said Section 32, a distance of 350 feet; thence East and parallel to the South boundary line of said Section 32, a distance of 405 feet; thence South and parallel to the East boundary line of said Section 32, a distance of 350 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at a point on the South boundary line of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho, 235 feet West of the Southeast corner of said Section 32; thence West along the South boundary line of said Section 32, a distance of 380 feet; thence North and parallel to the East boundary line of said Section 32, a distance of 350 feet; thence East and parallel to the South boundary line of said Section 32, a distance of 380 feet; thence South and parallel to the East boundary line of said Section 32, a distance of 350 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Southeast corner of said Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence West and following the South boundary of Section 32, a distance of 165 feet; thence North and parallel to the East boundary of Section 32, a distance of approximately 580 feet to the centerline of the Mora Canal; thence following the centerline of the Mora Canal in a Southeast direction to the East boundary of Section 32; thence South and following the East boundary of Section 32 approximately 505 feet to the Southeast corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho, the POINT OF BEGINNING.

AND EXCEPTING THEREFROM:

Beginning at a point 1,635 feet West of the Northeast corner of the Northeast quarter of the Southeast quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South on a line parallel with the East boundary line of said Northeast quarter of the Southeast quarter, a distance of 100 feet, more or less, to the centerline of Mora Canal; thence

LEGAL DESCRIPTION - EXHIBIT "A"

EXCEPTING THEREFROM:

Beginning at a point on the South boundary of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho, 1,350 feet West of the Southeast corner of said Section 32; thence continuing West along the South boundary line of said Section 32, a distance of 530 feet; thence North and parallel to the East boundary line of said Section 32, a distance of 350 feet; thence East and parallel to the South boundary line of said Section 32, a distance of 530 feet; thence South and parallel to the East boundary line of said Section 32, a distance of 350 feet to the PLACE OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Southeast corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South 89°57'14" West, a distance of 1,880.00 feet along the Southerly line of said Section 32 to a point, the REAL POINT OF BEGINNING; thence North 0°03'32" East and parallel to the Easterly section line of said Section 32 between the Southeast section corner and the East quarter corner, a distance of 350.01 feet to a point; thence South 89°57'08" West, a distance of 350.64 feet to a point; thence South 0°02'45" East, a distance of 350.00 feet to a point on the Southerly line of said Section 32; thence North 89°57'14" East, a distance of 350.00 feet along the Southerly line of the section to a point, the REAL POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Southeast corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South 89°57'14" West, a distance of 2,230.00 feet along the Southerly line of said Section 32 to a point, the REAL POINT OF BEGINNING; thence South 89°57'14" West, a distance of 350.00 feet along the section line to a point; thence North 0°02'46" West, a distance of 350.00 feet to a point; thence North 89°57'15" East, a distance of 350.00 feet to a point; thence South 0°02'46" East, a distance of 350.00 feet to a point, the REAL POINT OF BEGINNING.

PARCEL IIB

The Northwest quarter of the Southeast quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho.

(continued)

LEGAL DESCRIPTION - EXHIBIT "A"

EXCEPTING THEREFROM:

Beginning at a point 1,635 feet West of the Northeast corner of the Northeast quarter of the Southeast quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South on a line parallel with the East boundary line of said Northeast quarter of the Southeast quarter, a distance of 100 feet, more or less, to the centerline of Mora Canal; thence Southeasterly along the centerline of said Mora Canal to a point 1,170 feet West of the East boundary line of said Northeast quarter of the Southeast quarter; thence North on a line parallel with the East boundary line of said Northeast quarter of the Southeast quarter; thence West along said North boundary line to the POINT OF BEGINNING.

PARCEL XIX

The Southwest quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho.

EXCEPTING THEREFROM:

Beginning at the South quarter corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South 89°45'00" West along the section line, a distance of 770.00 feet to the REAL POINT OF BEGINNING; thence South 89°45'00" West along the section line, a distance of 504.88 feet to a point; thence North 0°15'00" West, a distance of 350.00 feet to a point; thence North 89°45'00" East, a distance of 504.88 feet to a point; thence South 0°15'00" East, a distance of 350.00 feet to the REAL POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the South quarter corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence South 89°45'00" West along the section line, a distance of 230.00 feet to the REAL POINT OF BEGINNING; thence South 89°45'00" West along the section line, a distance of 540.00 feet to a point; thence North 0°15'00" West, a distance of 350.00 feet to a point; thence North 89°45'00" East, a distance of 540.00 feet to a point; thence South 0°15'00" East, a distance of 350.00 feet to the REAL POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Southeast corner of the Southwest quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; running thence West along the South boundary line of said Southwest quarter, a distance of 229.77 feet; running thence North at right angles, a distance of 350 feet; running thence East at right angles, a distance of 229.77 feet; running thence South along the East boundary line of said Southwest quarter, a distance of 350 feet to the POINT OF BEGINNING.

(continued)

Northeasterly along the centerline of said Mora Canal to a point 1,170 feet West of the East boundary line of said Northeast quarter of the Southeast quarter; thence North on a line parallel with the East boundary line of said Northeast quarter of the Southeast quarter; thence West along said North to boundary line to the POINT OF BEGINNING.

PARCEL IIA

The Southwest quarter of the Southeast quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho.
(continued)

LEGAL DESCRIPTION - EXHIBIT "A"

EXCEPTING THEREFROM:

Beginning at a point 900 feet North of the Southwest corner of the Southwest quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; running thence East on a line parallel with the South boundary line of said Southwest quarter, a distance of 1,035 feet; running thence North at right angles, a distance of 200 feet, more or less, to the centerline of Mora Canal as the same is now located; running thence

Northwesterly along the centerline of said Mora Canal to its intersection of the West boundary line of said Southwest quarter; running thence

South along the West boundary line of said Southwest quarter, a distance of 730 feet, more or less, to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Northwest corner of the Southwest quarter of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence East on the North boundary of the Southwest quarter of Section 32, a distance of 363 feet; thence South parallel to the West boundary of the Southwest quarter of Section 32, to the centerline of the High Line Canal as it now exists; thence following the centerline of the High Line Canal in a Southwesterly direction to the intersection of the West boundary of the Southwest quarter of Section 32; thence North along the said West boundary to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

Beginning at the Southeast corner of Section 32, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho; thence West and following the South boundary of said Section 32, a distance of 2,640.70 feet to a point, the REAL POINT OF BEGINNING; thence West along the South boundary of said Section 32, a distance of 260.00 feet, to a point; thence North at right angles, a distance of 350.00 feet to a point; thence East and parallel to the South boundary of said Section 32, a distance of 260.00 feet to a point; thence South at right angles, a distance of 350.00 feet to the REAL POINT OF BEGINNING.

Wilder Irrigation District confirms water rights are attached to the 3 parcels and will remain with the property as long as irrigation fees are paid current.

EXHIBIT "C"



First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND
THE CONDITIONS AND STIPULATIONS OF THIS GUARANTEE,

First American Title Insurance Company

a corporation, herein called the Company

GUARANTEES

the Assured named in Schedule A against actual monetary loss or damage not exceeding the liability amount stated in Schedule A, which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

First American Title Insurance Company

BY

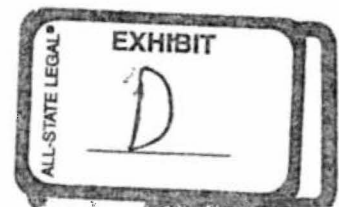
Gary L. Keruott

PRESIDENT

David B. Bortz

BY

AUTHORIZED SIGNATORY



GUARANTEE



First American Title Insurance Company

PIONEER TITLE COMPANY
Caldwell Office
610 So. Kimball
P. O. Box 610
Caldwell, Idaho 83605-0610

SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
 - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by public records.
 - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description (set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
 - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
 - (c) The identity of any party shown or referred to in Schedule A.
 - (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS

1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A) (C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

2. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

(a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company

may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss or Damage.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required

(5 continued)

in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. Options to Payor Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To Payor Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation or which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Payor Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To payor otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation or which the Company has exercised its options under Paragraph 4.

7. Determination and Extent of Liability.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The liability of the Company under this Guarantee

the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A or in Part 2;

(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or

(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

8. Limitation of Liability.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. Payment of Loss.

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. Arbitration.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

13. Liability Limited to This Guarantee; Guarantee Entire Contract.

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

14. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at 1 First American Way, Santa Ana, California 92707.

LITIGATION GUARANTEE

SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE,

First American Title Insurance Company,

a California corporation, herein called the Company,

GUARANTEES

the Assured named in Schedule A against loss not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurance which the company hereby gives that, according to the public records, as of Date of Guarantee shown in Schedule A:

1. The title to the herein described estate or interest is vested in the vestee named in Schedule A.
2. Except for the matters shown in Schedule B, there are no defects, liens, encumbrances or other matters affecting title to the estate or interest in the land shown in Schedule A, which matters are not necessarily shown in the order of their priority.
3. a) The current interest holders claiming some right, title or interest by reason of the matters shown in Part II of Schedule B are as shown therein. The vestee named in Schedule A and parties claiming to have some right, title or interest by reason of the matters shown in Part II of Schedule B may be necessary parties defendant in an action, the nature of which is referred to in Schedule A.

b) The current interest holders claiming some right, title or interest by reason of the matters shown in Part I of Schedule B may also be necessary parties defendant in an action, the nature of which is referred to in Schedule A. However, no assurance is given hereby as to those current interest holders.
4. The return addresses for mailing after recording, if any, as shown in each and every document referred to in Part II of Schedule B by specific recording information, and as shown on the document(s) vesting title as shown in Schedule A are as shown in Schedule C.

THIS LITIGATION GUARANTEE IS FURNISHED SOLELY FOR THE PURPOSE OF FACILITATING THE FILING OF THE ACTION REFERRED TO IN SCHEDULE A. IT SHALL NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE.

First American Title Insurance Company

BY  PRESIDENT

ATTEST  SECRETARY



LITIGATION GUARANTEE

SCHEDULE A

<u>Order No.:</u>	<u>Litigation No.:</u>	<u>Liability:</u>	<u>Fee:</u>
200803959	H-937950	\$129,842.20	\$695.00
<u>Customer Ref. No.:</u>			

1. Name of Assured:

Hamilton, Michaelson & Hilty and Extreme Line Construction, Inc.

2. Date of Guarantee:

April 18, 2008 at 7:30 AM

3. This Litigation Guarantee is furnished solely for the purpose of facilitating the filing of an action to
To Foreclose Lien Instrument No. 2007081816

4. The estate or interest in the land hereinafter described or referred to covered by this Guarantee is:
Fee Simple

5. Title to said estate or interest at the date hereof is vested in:

L202-1 ID Peregrine Estates, LLC., a Washington limited liability company

6. The land referred to in this Guarantee is described as follows:

SEE ATTACHED EXHIBIT A

EXHIBIT A

PARCEL I

A parcel of land located in the Northeast Quarter of the Southwest Quarter of Section 13, Township 3 North, Range 3 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

COMMENCING at the Northwest corner of the Northwest Quarter of the Southwest Quarter of Section 13 (West Quarter corner), Township 3 North, Range 3 West, Boise Meridian, Canyon County, Idaho; thence along the North line of the Northwest Quarter of the Southwest Quarter of said Section 13

North 89°56'48" East 1330.45 feet to the Northwest corner of said Northeast Quarter of the Southwest Quarter, the REAL POINT OF BEGINNING of this description; thence along the North line of the Northeast Quarter of the Southwest Quarter

North 88°56'48" East 1157.10 feet to a point on the centerline of the upper embankment drain; thence along said centerline

South 06°38'54" East 929.33 feet to a point; thence

South 89°00'00" West 1266.86 feet to a point on the West line of said Northeast Quarter of the Southwest Quarter; thence along said West line

North 00°08'03" East 923.92 feet to the REAL POINT OF BEGINNING.

PARCEL II

A parcel of land located in the West Half of the Southwest Quarter of Section 13, Township 3 North, Range 3 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

COMMENCING at the Northwest corner of the Northwest Quarter of the Southwest Quarter of Section 13 (West Quarter corner), Township 3 North, Range 3 West, Boise Meridian, Canyon County, Idaho; thence along the West line of the Northwest Quarter of the Southwest Quarter of said Section 13

South 00°03'44" West 1322.22 feet to the Northwest corner of the Southwest Quarter of said Southwest Quarter; thence along the North line of said Southwest Quarter of the Southwest Quarter

North 89°00'00" East 25.00 feet to the East right-of-way for Lake Avenue, the REAL POINT OF BEGINNING of this description; thence along said North line and the North line of the Southwest Quarter of said Southwest Quarter

North 89°00'00" East 1776.80 feet to a point; thence

South 00°56'24" East 1323.69 feet to a point on the South line of said Southwest Quarter; thence along said South line

South 89°03'11" West 689.79 feet to a point; thence

North 00°57'07" West 435.60 feet to a point; thence

South 89°03'11" West 200.00 feet to a point; thence

North 00°57'07" West 867.27 feet to a point 20 feet South of the North line of said Southwest Quarter of the Southwest Quarter; thence along a line 20 feet South of and parallel to said North line

South 89°00'00" West 887.09 feet to a point on the East right-of-way for Lake Avenue; thence along said East right-of-way

North 00°02'44" East 20.00 feet to the REAL POINT OF BEGINNING.

NOTE: THE LEGAL DESCRIPTION ATTACHED TO THIS DOCUMENT APPEARS TO HAVE ERRORS CONTAINED HEREIN.

First American Title Insurance Company

LITIGATION GUARANTEE

SCHEDULE B

Exceptions

Order Number:

200803959

Date of Guarantee:

April 18, 2008 at 7:30:00
AM

Litigation Number:

H-937950

Defects, liens, encumbrances or other matters affecting title:

Part I:

1. General taxes for the year 2007, which are a lien, of which the first half is delinquent and the second half is due and payable on or before June 20, 2008 and not delinquent until after said date. Account No. R32815000 0. (Parcel I)
2. General taxes for the year 2007, which are a lien, of which the first half is delinquent and the second half is due and payable on or before June 20, 2008 and not delinquent until after said date. Account No. R32804011 0. (Parcel II)
3. Liens and assessments of Pioneer Irrigation District, and the rights and powers of said district as by law provided. No search made.
4. Reservations in United States Patent or State Deeds.
5. Rights of way for irrigation and drainage ditches and canals and roads, including but not limited to Upper Embankment Drain. (Affects Parcel I)
6. Rights of way for irrigation and drainage ditches and canals and roads, including but not limited to Orchard Avenue and Phyllis Canal. (Affects Parcel II)
7. Easement as granted by STEVE DAGGER and MARIA T. DAGGER, to THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY by instrument recorded December 3, 1987 as Instrument No. 8725074, records of Canyon County, Idaho; for operation, maintenance and repair of its lines.
Affects: The exact location of easement is not disclosed in the instrument. (Affects Parcel I)
8. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Property Line Adjustment Record of Survey recorded November 20, 2003 as Instrument No. 200371984, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Affects Parcel II)

First American Title Insurance Company

LITIGATION GUARANTEE

SCHEDULE B

Exceptions

Order Number:

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9. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded April 6, 2004 as Instrument No. 200418176, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Affects Parcel II)
10. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded December 8, 2004 as Instrument No. 200467170, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Affects Parcels I & II)
11. Development Agreement upon the terms, conditions and provisions contained therein:
Dated: April 13, 2007
Parties: City of Caldwell, a municipal corporation and L-202-1 ID Peregrine Estates
Recorded: May 22, 2007 as Instrument No. 2007035005, records of Canyon County, Idaho. (Affects Parcels I & II)
12. A Mortgage and Fixture Filing to secure an indebtedness of \$2,800,000.00 as shown below, and any other obligation secured thereby.
Dated: June 1, 2006
Mortgagor: L202-1 ID PEREGRINE ESTATES, LLC
Mortgagee: CENTRUM FINANCIAL SERVICES, INC.
Recorded: June 1, 2006 as Instrument No. 200642591, records of Canyon County, Idaho.
Re-Recorded: June 16, 2006 as Instrument No. 200647703, records of Canyon County, Idaho.

NOTE: THE LEGAL DESCRIPTION ATTACHED TO THIS DOCUMENT APPEARS TO HAVE ERRORS CONTAINED HEREIN. (Affects Parcels I & II and other property)

An Assignment of the beneficial interest under said Mortgage and Fixture Filing which names.

As Assignee: FORTUNE BANK

Recorded: December 18, 2006 as Instrument No. 2006099539 records of Canyon County, Idaho.

NOTE: THIS ASSIGNMENT HAS AN INCORRECT LEGAL DESCRIPTION ATTACHED.

First American Title Insurance Company

LITIGATION GUARANTEE

SCHEDULE B

Exceptions

Order Number:

200803959

Date of Guarantee:

April 18, 2008 at 7:30:00
AM

Litigation Number:

H-937950

An Assignment of the beneficial interest under said Mortgage and Fixture Filing which names

As Assignee: FORTUNE BANK

Recorded June 4, 2007 as Instrument No. 2007000870 records of Canyon County, Idaho.

NOTE: THIS ASSIGNMENT HAS AN INCORRECT LEGAL DESCRIPTION ATTACHED.

An Assignment of the beneficial interest under said Mortgage and Fixture Filing which names

As Assignee: CENTRUM FINANCIAL SERVICES, INC., a Washington corporation

Recorded February 5, 2007 as Instrument No. 200708606 records of Canyon County,
Idaho.

NOTE: THIS ASSIGNMENT HAS AN INCORRECT LEGAL DESCRIPTION ATTACHED.

13. A Mortgage and Fixture Filing to secure an indebtedness of \$1,200,000.00 as shown below, and any other obligation secured thereby.

Dated: June 1, 2006

Mortgagor: L202-1 ID PEREGRINE ESTATES, LLC a Washington limited liability
company

Mortgagee: CENTRUM FINANCIAL SERVICES, INC.

Recorded: June 1, 2006 as Instrument No. 200642582, records of Canyon County,
Idaho.

Re-Recorded: June 16, 2006 as Instrument No. 200647702, records of Canyon County,
Idaho.

NOTE: THE LEGAL DESCRIPTION ATTACHED TO THIS DOCUMENT APPEARS TO
HAVE ERRORS CONTAINED HEREIN. (Affects Parcels I & II and other property)

An Assignment of the beneficial interest under said Mortgage which names

As Assignee: BINGO INVESTMENTS, LLC, a Washington limited liability company

Recorded August 3, 2007 as Instrument No. 2007053925 records of Canyon County,
Idaho.

NOTE: THE LEGAL DESCRIPTION ATTACHED TO THIS DOCUMENT APPEARS TO
HAVE ERRORS CONTAINED HEREIN.

An Agreement which states that this instrument was subordinated to an instrument:

Recorded: June 1, 2006 as Instrument No. 200642591

Re-recorded June 16, 2006 as Instrument No. 200647703,

By Agreement Recorded: August 8, 2006 as Instrument No. 200664416, records of Canyon
County, Idaho.

First American Title Insurance Company

LITIGATION GUARANTEE

SCHEDULE B

Exceptions

Order Number:

200803959

Date of Guarantee:

April 18, 2008 at 7:30:00
AM

Litigation Number:

H-937950

14. A Deed of Trust to secure an indebtedness of \$129,842.20, and any other amounts as therein provided, payable under the terms, conditions, provisions and stipulations thereof.

Dated: October 24, 2007

Grantor: L202-1 ID PEREGRINE, LLC

Trustee: TRANSNATION TITLE AND ESCROW, INC., a Delaware corporation

Beneficiary: EXTREME LINE CONSTRUCTION, INC.

Recorded: November 2, 2007 as Instrument No. 2007073040, records of Canyon
County, Idaho.

NOTE: THE LEGAL DESCRIPTION ATTACHED TO THIS DOCUMENT APPEARS TO
HAVE ERRORS CONTAINED HEREIN. (Affects Parcels I & II and other property)

15. Claim of Lien against L202-1 ID Peregrine, LLC in favor of Extreme Line Construction, Inc., in the original amount of \$129,842.20, recorded December 19, 2007 as Instrument No. 2007081816, records of Canyon County, Idaho. NOTE: THE LEGAL DESCRIPTION ATTACHED TO THIS DOCUMENT APPEARS TO HAVE ERRORS CONTAINED HEREIN. (Affects Parcels I & II and other property)

Part II:

16. Claim of Lien against L202-1 ID Peregrine Estates, LLC in favor of SPF Water Engineering, LLC, in the original amount of \$798.00, recorded January 11, 2008 as Instrument No. 2008001986, records of Canyon County, Idaho. (Affects Parcels I & II)

NOTE: THIS DOCUMENT APPEARS TO CONTAIN AN INCOMPLETE LEGAL
DESCRIPTION

17. A Deed of Trust to secure an indebtedness of \$13,308.80, and any other amounts as therein provided, payable under the terms, conditions, provisions and stipulations thereof.
- Dated: January 11, 2008
- Grantor: L202-1 ID PEREGRINE, LLC
- Trustee: TRANSNATION TITLE AND ESCROW, INC., a Delaware corporation
- Beneficiary: CONGER MANAGEMENT GROUP
- Recorded: January 11, 2008 as Instrument No. 2008002078, records of Canyon County,
Idaho.

First American Title Insurance Company

LITIGATION GUARANTEE

SCHEDULE B

Exceptions

Order Number:

200803959

Date of Guarantee:

April 18, 2008 at 7:30:00
AM

Litigation Number:

H-937950

NOTE: THE LEGAL DESCRIPTION ATTACHED TO THIS DOCUMENT APPEARS TO HAVE ERRORS CONTAINED HEREIN. (Affects Parcels I & II and other property)

18. Claim of Lien against Union Land Company, Inc and L202-1 ID Peregrine Estates, LLC in favor of Stanley Consultants, Inc., in the original amount of \$155,441.40, recorded February 22, 2008 as Instrument No. 2008009209, records of Canyon County, Idaho. (Affects Parcels I & II and other property)

First American Title Insurance Company

LITIGATION GUARANTEE

SCHEDULE C

Order Number:

200803959

Date of Guarantee:

April 18, 2008 at 7:30 AM

Litigation Number:

H-937950

Exception No./Recording Information/Mailing Address, (per County Records):

L202-1 ID Peregrine Estates, LLC
1059 East Iron Eagle Drive
Suite 155
Eagle, Idaho 83616

Kerry Angelos
1059 East Iron Eagle Drive
Suite 155
Eagle, Idaho 83616

Union Land Company, LLC
1059 East Iron Eagle Drive
Suite 155
Eagle, Idaho 83616

Centrum Financial Services, Inc., a Washington corporation
2101 Fourth Avenue, Suite 1300
Seattle, WA 98121

Bruce Berreth
Centrum Financial Services, Inc.
PO Box 2243
Seattle, WA 98111-2243

Bingo Investments, LLC, a Washington limited liability company
10500 N.E. 8th Street, No 1825
Bellevue, WA 98004

Extreme Line Construction, Inc.
8145 E Colter Bay Drive
Nampa, ID 83687

First American Title Insurance Company

LITIGATION GUARANTEE

SCHEDULE C

Order Number:

200803959

Date of Guarantee:

April 18, 2008 at 7:30 AM

Litigation Number:

H-937950

Extreme Line Construction, Inc.
doing business as
Extreme Line Logistics, Inc.
Casey M. Daniels, President
8145 E Colter Bay Drive
Nampa, ID 83687

John Tansey
Conger Management Group
405 S.8th St., Suite 290
Boise, Idaho 83702

James David Conger, President
Conger Management Group
405 S.8th St., Suite 290
Boise, Idaho 83702

Christian R. Petrich, Registered Agent for
SPF Water Engineering, LLC
600 E. River Park Lane Suite #105
Boise, Idaho 83706

Stanley Consultants, Inc.
225 Iowa Ave
Muscatine, Iowa 52761

Stanley Consultants, Inc.
C/O CT Corporation System, Registered Agent
1111 W. Jefferson Suite 530
Boise, Idaho 83702

Stanley Consultants, Inc.
C/O Eric B. Nelson
Givens Pursley LLP
601 W. Bannock
Boise, Idaho 83702



Canyon County, Assessor
Gene Kuehn, Assessor

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Parcel



Parcel Number
1 of 1

Property Info

Parcel

[Print View](#)

[Land](#)

[Improvements](#)

[Transfer History](#)

[Value History](#)

[Tax Record](#)

Searches

[Address](#)

[Parcel Number](#)

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Parcel Number
32815000 0

Site Address
0 LAKE AVE NA ID, NA

Current Total Assessed Value
\$20,300

Owner Information

Owner Name L202-1 ID PEREGRINE ESTATES LLC

Mailing Address 10515 20TH ST STE 100
EVERETT WA 98205

Transfer Date 06/01/2006

Document # 200642580

Deed Book/Page

Location / Description

Tax District 075-00

Canyon County 001,

Parcel Address 0 LAKE AVE NA ID, NA

Deeded Acreage 25.2800

Section & Plat

Routing #

Legal Desc. 13-3N-3W SW TX 06503 IN NESW-S & W OF UPPER
EMBANKMENT DRA IN

Parcel Type

Property Class Code 102 - Irrigated pasture land

Neighborhood Code 200000

Neighborhood Factor .00

Street / Road Code A

Topography

Level Ground N

High N

Low N

Rolling N

Swampy N

Services

Water N

Sewer N

Natural Gas N

Electricity N

Sidewalk N

Alley N

Assessment Information

Current Land Value

\$20,300 Residential Land

\$0 Adjustment Factor

0.00

276

Current Imp. Value	\$0	Residential Imp.	\$0	Average Value / Acre	\$0
Current Total Assessed Value	\$20,300	Residential Total	\$0	Appraisal Date	2/17/2006
Commercial Land	\$20,300	Non-Res Land	\$0	Reason For Change	01
Commercial Imp.	\$0	Non-Res Imp.	\$0	Prior Land Value	\$21,300
Commercial Total	\$20,300	Non-Res Total	\$0	Prior Imp. Value	\$0
Dwelling Value	\$0	Classified Land Value	\$0		
Farmland Value	\$0	Homesite Value	\$0		

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Canyon County, Idaho

generated on 4/28/2008 5:22:00 PM EST

Tax Record

Last Update:

Details

PIN	AIN	Tax Roll	Tax Year	Bill Number
32815000 0	C000000134900	Real Property	2007	2007004054
Current Owner L202-1 ID PEREGRINE ESTATES LLC 10515 20TH ST STE 100 EVERETT WA 98205		Situs 0 LAKE AVE		
Owner of Record L202-1 ID PEREGRINE ESTATES LLC		Legal Description 13-3N-3W SW TX 06503 IN NESW-S & W OF UPPER EMBANKMENT DRAIN		
Lender		TAG 001-03		

Assessment Information

Authority	Exempt	Taxable	Rate	Gross	Credits	Net Tax	Savings
112 PEST CONTROL							
PEST CONTROL	0	20,300	0.00005085	1.02	0.00	1.02	0.00
653 AMBULANCE DISTRICT							
AMBULANCE-GENERAL	0	20,300	0.000175598	3.56	0.00	3.56	0.00
699 CANYON HWY #4							
HIGHWAY-ROAD	0	20,300	0.000346935	7.04	0.00	7.04	0.00
HIGHWAY-SPECIAL BRIDGE	0	20,300	0.000735524	14.92	0.00	14.92	0.00
HIGHWAY-TORT CLAIMS	0	20,300	0.000019044	0.40	0.00	0.40	0.00
JUDGEMENTS	0	20,300	0.000000048	0.00	0.00	0.00	0.00
770 VALLIVUE SCHOOL DIST #139							
JUDGEMENTS	0	20,300	0.000017926	0.36	0.00	0.36	0.00
SCHOOLS-BOND REDEMPTION	0	20,300	0.002512781	51.02	0.00	51.02	0.00
SCHOOLS-EMERGENCY	0	20,300	0.0006	12.18	0.00	12.18	0.00
SCHOOLS-OVERRIDE BY ELECTION	0	20,300	0.001570488	31.88	0.00	31.88	0.00
SCHOOLS-PLANT FACILITIES	0	20,300	0.000523496	10.62	0.00	10.62	0.00
SCHOOLS-TORT CLAIMS	0	20,300	0.00000535	0.12	0.00	0.12	0.00
998 CANYON COUNTY							
ASSESSOR'S REAPPRAISAL	0	20,300	0.000142105	2.88	0.00	2.88	0.00
CHARITY	0	20,300	0.000065068	1.32	0.00	1.32	0.00
COUNTY FAIR	0	20,300	0.000026884	0.54	0.00	0.54	0.00
CURRENT EXPENSE	0	20,300	0.001970447	40.00	0.00	40.00	0.00
DISTRICT COURT	0	20,300	0.000084893	1.72	0.00	1.72	0.00
HEALTH DISTRICT	0	20,300	0.000063961	1.30	0.00	1.30	0.00
HISTORICAL SOCIETY	0	20,300	0.00001687	0.34	0.00	0.34	0.00
JUSTICE	0	20,300	0.001462323	29.70	0.00	29.70	0.00
PARK'S & RECREATION	0	20,300	0.000044814	0.92	0.00	0.92	0.00

TORT	0	20,300	0.000038899	0.78	0.00	0.78	0.00
WEED CONTROL	0	20,300	0.000012534	0.26	0.00	0.26	0.00
Total Net Tax						212.88	
Installment							
Period	Due Date	Tax	Penalty/Fee	Interest	Total Due		
First	12/20/2007	\$106.44	\$0.00	\$0.00	\$106.44		
Second	6/20/2008	\$106.44	\$0.00	\$0.00	\$106.44		
PayInFull						\$212.88	
Prior Year Taxes Due							
No Records Found							



Canyon County, Assessor
Gene Kuehn, Assessor

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Parcel



Parcel Number
1 of 1

Property Info

Parcel

Print View

Land

Improvements

Transfer History

Value History

Tax Record

Searches

Address

Parcel Number

Owner

Legal Desc.

Functions

Welcome Page

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Mapping →

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Subscriptions

Parcel Number
32804011 0

Site Address
0 ORCHARD AVE NA ID, NA

Current Total Assessed Value
\$25,260

Owner Information

Owner Name L202-1 ID PEREGRINE ESTATES LLC

Mailing Address 10515 20TH ST STE 100
EVERETT WA 98205

Transfer Date 06/01/2006

Document # 200642580

Deed Book/Page

Location / Description

Tax District 075-00

Section & Plat

Canyon County 001,

Routing #

Parcel Address 0 ORCHARD AVE NA ID, NA

Legal Desc. 13-3N-3W SW TX 06504 IN S 1/2 SW

Deeded Acreage 25.0200

Parcel Type

Topography

Services

Property Class Code 101 - Irrigated Ag Land Vacant

Level Ground

N

Water

N

Neighborhood Code 200000

High

N

Sewer

N

Neighborhood Factor .00

Low

N

Natural Gas

N

Street / Road Code A

Rolling

N

Electricity

N

Swampy

N

Sidewalk

N

Alley

N

Assessment Information

Current Land Value

\$25,260 Residential Land

\$0 Adjustment Factor

0.00

280

11

Current Imp. Value	\$0	Residential Imp.	\$0	Average Value / Acre	\$0
Current Total Assessed Value	\$25,260	Residential Total	\$0	Appraisal Date	2/21/2006
Commercial Land	\$25,260	Non-Res Land	\$0	Reason For Change	01
Commercial Imp.	\$0	Non-Res Imp.	\$0	Prior Land Value	\$24,900
Commercial Total	\$25,260	Non-Res Total	\$0	Prior Imp. Value	\$0
Dwelling Value	\$0	Classified Land Value	\$0		
Farmland Value	\$0	Homesite Value	\$0		

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Tax Record

Last Update:

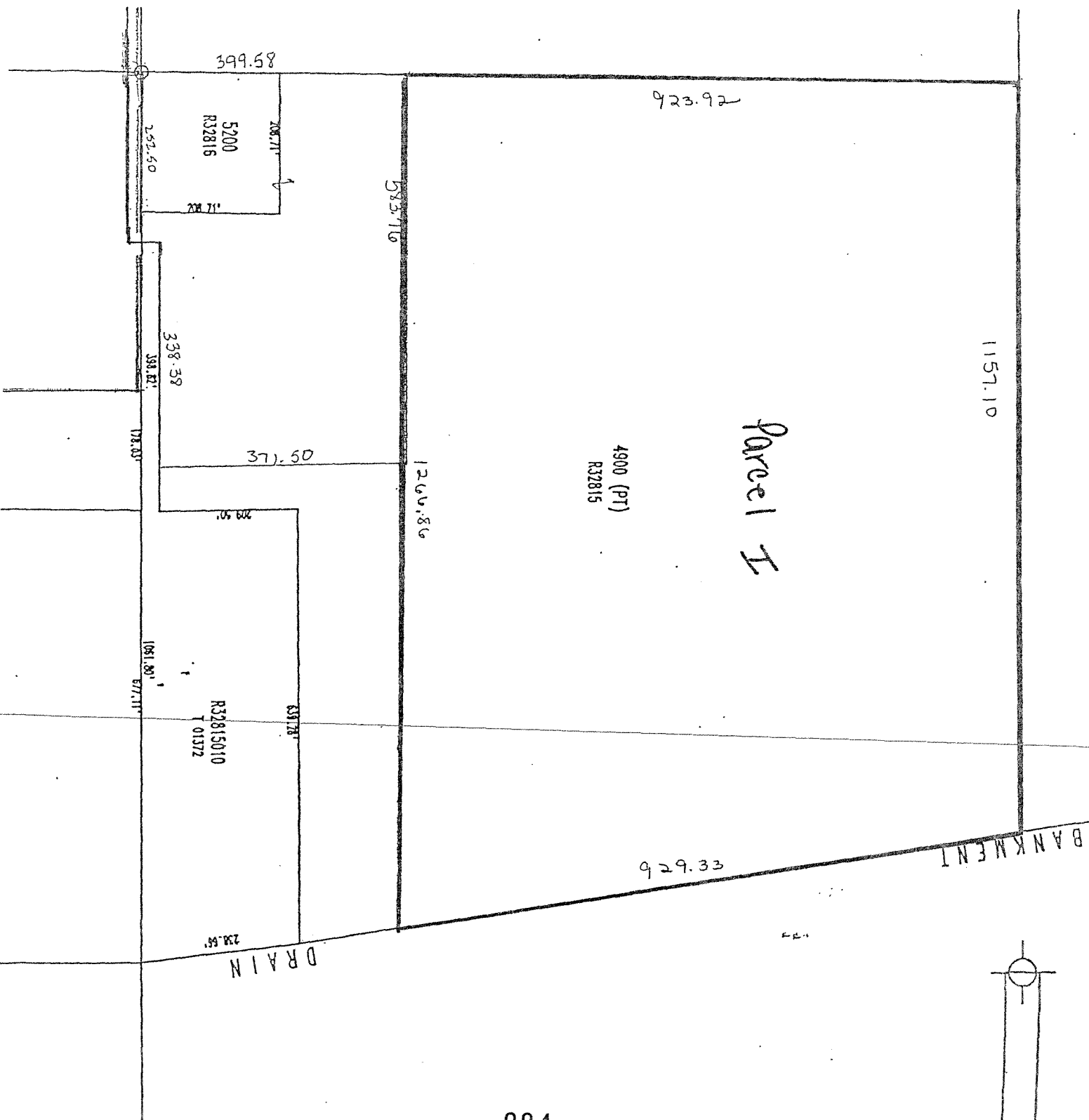
Details

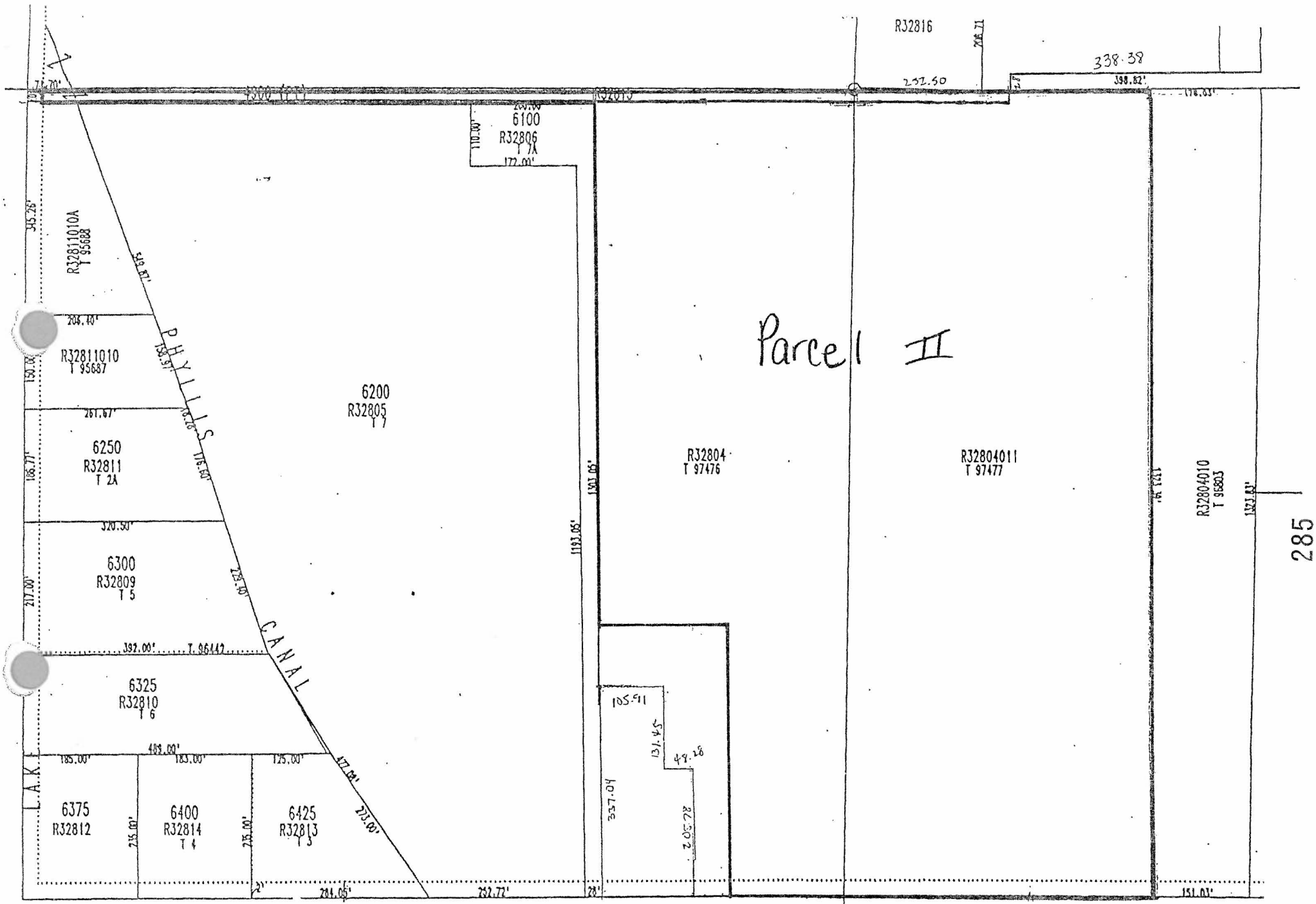
PIN	AIN	Tax Roll	Tax Year	Bill Number
32804011 0	C00000136010	Real Property	2007	2007004041
Current Owner L202-1 ID PEREGRINE ESTATES LLC 10515 20TH ST STE 100 EVERETT WA 98205		Situs 0 ORCHARD AVE		
Owner of Record L202-1 ID PEREGRINE ESTATES LLC		Legal Description 13-3N-3W SW TX 06504 IN S 1/2 SW		
Lender		TAG 001-03		

Assessment Information

Authority	Exempt	Taxable	Rate	Gross	Credits	Net Tax	Savings
112 PEST CONTROL							
PEST CONTROL	0	25,260	0.00005085	1.28	0.00	1.28	0.00
653 AMBULANCE DISTRICT							
AMBULANCE-GENERAL	0	25,260	0.000175598	4.44	0.00	4.44	0.00
699 CANYON HWY #4							
HIGHWAY-ROAD	0	25,260	0.000346935	8.76	0.00	8.76	0.00
HIGHWAY-SPECIAL BRIDGE	0	25,260	0.000735524	18.58	0.00	18.58	0.00
HIGHWAY-TORT CLAIMS	0	25,260	0.000019044	0.48	0.00	0.48	0.00
JUDGEMENTS	0	25,260	0.000000048	0.00	0.00	0.00	0.00
770 VALLIVUE SCHOOL DIST #139							
JUDGEMENTS	0	25,260	0.000017926	0.46	0.00	0.46	0.00
SCHOOLS-BOND REDEMPTION	0	25,260	0.002512781	63.46	0.00	63.46	0.00
SCHOOLS-EMERGENCY	0	25,260	0.0006	15.16	0.00	15.16	0.00
SCHOOLS-OVERRIDE BY ELECTION	0	25,260	0.001570488	39.68	0.00	39.68	0.00
SCHOOLS-PLANT FACILITIES	0	25,260	0.000523496	13.22	0.00	13.22	0.00
SCHOOLS-TORT CLAIMS	0	25,260	0.00000535	0.14	0.00	0.14	0.00
998 CANYON COUNTY							
ASSESSOR'S REAPPRAISAL	0	25,260	0.000142105	3.58	0.00	3.58	0.00
CHARITY	0	25,260	0.000065068	1.64	0.00	1.64	0.00
COUNTY FAIR	0	25,260	0.000026884	0.68	0.00	0.68	0.00
CURRENT EXPENSE	0	25,260	0.001970447	49.78	0.00	49.78	0.00
DISTRICT COURT	0	25,260	0.000084893	2.14	0.00	2.14	0.00
HEALTH DISTRICT	0	25,260	0.000063961	1.62	0.00	1.62	0.00
HISTORICAL SOCIETY	0	25,260	0.00001687	0.42	0.00	0.42	0.00
JUSTICE	0	25,260	0.001462323	36.94	0.00	36.94	0.00
PARK'S & RECREATION	0	25,260	0.000044814	1.14	0.00	1.14	0.00
TORT	0	25,260	0.000038899	0.98	0.00	0.98	0.00

WEED CONTROL	0	25,260	0.000012534	0.32	0.00	0.32	0.00
Total Net Tax						264.90	
Installment							
Period	Due Date	Tax	Penalty/Fee	Interest	Total Due		
First	12/20/2007	\$132.45	\$0.00	\$0.00	\$132.45		
Second	6/20/2008	\$132.45	\$0.00	\$0.00	\$132.45		
PayInFull					\$264.90		
Prior Year Taxes Due							
No Records Found							





FILED
A.M. 23 / P.M.

DEC 07 2009

CANYON COUNTY CLERK
J DRAKE, DEPUTY

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Rebecca A. Rainey, ISB No. 7525
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mor@moffatt.com
rar@moffatt.com
23690.0002

Attorneys for Defendants Integrated Financial Associates, Inc.,
Geneva Equities, LLC, and Certain Other Named Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC., d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, et al.,

Defendants.

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company, et al.,

Defendants.

Case No. CV08-4251C, consolidated with
CV08-4252C and CV08-11321

**INTEGRATED FINANCIAL
ASSOCIATES, INC.'S CROSS-
MOTION FOR SUMMARY
JUDGMENT**

**INTEGRATED FINANCIAL ASSOCIATES, INC.'S
CROSS-MOTION FOR SUMMARY JUDGMENT - 1**

Client:1445656.1

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
corporation, et al.,

Defendants.

Integrated Financial Associates, Inc. ("IFA"), by and through undersigned counsel of record, and moves this Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, for summary judgment on Extreme Line Logistic, Inc.'s Cross-Claim and Counterclaim seeking foreclosure of the Claim of Lien recorded in Canyon County as Instrument Number 2007081815 on December 19, 2007. This motion is supported by the Combined Memorandum in Opposition to Extreme Line Logistic, Inc.'s Motion for Summary Judgment and in Support of IFA's Cross-Motion for Summary Judgment filed concurrently herewith.

DATED this 7th day of December, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By RLA
Rebecca A. Rainey – Of the Firm
Attorneys for Defendants
Integrated Financial Associates, Inc.,
Geneva Equities, LLC, and
Certain Other Named Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of December, 2009, I caused a true and correct copy of the foregoing **INTEGRATED FINANCIAL ASSOCIATES, INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

David T. Krueck
TROUT JONES GLEDHILL FUHRMAN, P.A.
225 N. 9th St., Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Fax (208) 331-1529
*Attorneys for Hap Taylor & Sons, Inc. d/b/a
Knife River*

(X) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

David E. Wishney
300 W. Myrtle St., Suite 200
P.O. Box 837
Boise, ID 83701-0837
Facsimile (208) 342-5749
*Attorneys for L222-1 ID Summerwind, LLC,
L222-2 ID Summerwind, LLC, L222-3 ID
Summerwind, LLC, and Union Land Company,
LLC, Kerry Angelos*

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() Overnight Mail
() Facsimile

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Attorneys for PMA, Inc.

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Attorneys for Riverside, Inc.

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& JONES
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() Overnight Mail
() Facsimile

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P.O. Box 140857
Boise, ID 83714
Facsimile 800-881-6219
Attorneys for Extreme Line Logistics, Inc.

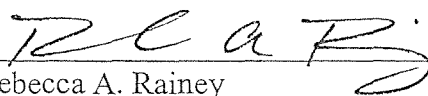
(X) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

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P.O. Box 44
Caldwell, ID 83606
Facsimile (208) 459-4573
*Attorneys for Michael W. Benedict and
Carol L. Benedict*

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() Hand Delivered
() Overnight Mail
() Facsimile

Tom Mehiel, President
VALLEY HYDRO, INC.
1904 E. Beech St.
Caldwell, ID 83605
Pro Se Defendant

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() Hand Delivered
() Overnight Mail
() Facsimile


Rebecca A. Rainey

FILED
DEC 7 2009
P.M.

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rar@moffatt.com
23690.0002

CANYON COUNTY CLERK
J DRAKE, DEPUTY

Attorneys for Defendants Integrated Financial Associates, Inc.,
Geneva Equities, LLC, and Certain Other Named Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC., d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, et al.,

Defendants.

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business
as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company, et al.,

Defendants.

Case No. CV08-4251C, consolidated with
CV08-4252C and CV08-11321

**COMBINED MEMORANDUM IN
OPPOSITION TO EXTREME LINE
LOGISTICS, INC.'S MOTION FOR
SUMMARY JUDGMENT AND IN
SUPPORT OF INTEGRATED
FINANCIAL ASSOCIATES, INC.'S
CROSS-MOTION FOR SUMMARY
JUDGMENT**

**COMBINED MEMORANDUM IN OPPOSITION TO EXTREME LINE
LOGISTICS, INC.'S MOTION FOR SUMMARY JUDGMENT AND IN
SUPPORT OF INTEGRATED FINANCIAL ASSOCIATES, INC.'S
CROSS-MOTION FOR SUMMARY JUDGMENT - 1**

Client:1442573.1

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
corporation, et al.,

Defendants.

COMES NOW Integrated Financial Associates, Inc. ("IFA"), by and through undersigned counsel of record, and hereby files this combined memorandum in opposition to Extreme Line Logistics, Inc.'s motion for summary judgment and in support of Integrated Financial Associates, Inc.'s cross-motion for summary judgment.

I. INTRODUCTION

This is a simple case in which Extreme Line Logistics, Inc. ("Extreme Line"), holder of mechanic's lien rights under Idaho Code Section 45-501, *et. seq.*, lost such lien rights because it failed to exercise the same within the limitations period required by Idaho law. In its motion for summary judgment, Extreme Line focuses solely on the actions taken to establish its lien rights and asserts the priority thereof. Conspicuously absent from Extreme Line's memorandum in support of its motion for summary judgment is any discussion regarding the statutory requirement that Extreme Line file an action to enforce its lien within the six month time frame mandated by Idaho Code Section 45-510 or any discussion regarding why the failure to meet this statutory requirement should not result in the invalidation of such lien. As the following combined memorandum in opposition to Extreme Line's motion for summary judgment and in support of IFA's cross-motion for summary judgment demonstrates, Extreme

**COMBINED MEMORANDUM IN OPPOSITION TO EXTREME LINE
LOGISTICS, INC.'S MOTION FOR SUMMARY JUDGMENT AND IN
SUPPORT OF INTEGRATED FINANCIAL ASSOCIATES, INC.'S
CROSS-MOTION FOR SUMMARY JUDGMENT - 2**

Client:1442573.1

Line's failure to file an action to foreclose on its materialman's lien within the statutory time frame renders such lien ineffective against the property and deprives this Court of jurisdiction to enter a decree of foreclosure respecting the same.

II. UNDISPUTED FACTS

1. On December 19, 2007, Extreme Line recorded a Notice and Claim of Line as Instrument Number 2007081815 in the office of the Canyon County Recorder (the "Mechanic's Lien"). Affidavit of Casey Daniels in Support of Motion for Summary Judgment, filed on or about October 14, 2009, Exhibit B.

2. On July 24, 2008, Extreme Line responded to the suit first filed by Hap Taylor and Sons, Inc. d/b/a/ Knife River by filing an Answer, Cross-Claim and Counterclaim. The Cross-Claim and Counterclaim included a cause of action to foreclose on the Mechanic's Lien. Extreme Line Logistics, Inc.'s Answer, Counterclaim and Crossclaim filed July 24, 2008, in Case No. CV08-4251C.

III. STANDARD OF REVIEW

In *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988), the Idaho Supreme Court adopted the summary judgment standard announced by the United States Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Thus, under Idaho law, "[t]he moving party is entitled to judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial." 115 Idaho at 102, 765 P.2d at 127. As the court stated in *Jarman v. Hale*, 122 Idaho 952, 842 P.2d 288 (Ct. App. 1992):

A party opposing a motion for summary judgment has the burden of presenting sufficient evidence to establish a triable issue which arises from the facts, and a genuine issue of fact is not created by a mere scintilla of evidence. . . . Summary judgment is proper if the evidence before the court on the motion would warrant a directed verdict if the case were to go [to] trial. *Id.* Further, *a nonmoving party's failure to make a showing sufficient to establish the existence of an element essential to that party's case, on which that party will bear the burden of proof at trial, requires the entry of summary judgment.* *Celotex Corp. v. Catrett*, *supra*; see also I.R.C.P. 56(c). "In such a situation, there can be no 'genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex Corp. v. Catrett*, 477 U.S. at 322-23, 106 S.Ct. at 2552.

Jarman, 122 Idaho at 955-56, 842 P.2d at 291-92 (emphasis added) (citation omitted), *overruled on other grounds by Puckett v. Verska*, 144 Idaho 161, 158 P.3d 937 (2007). See also *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 707, 99 P.3d 1092, 1097 (Ct. App. 2004) ("The language and reasoning of *Celotex* ha[ve] been adopted in Idaho."); *Nelson v. City of Rupert*, 128 Idaho 199, 202, 911 P.2d 1111, 1114 (1996); *Olsen v. J. A. Freeman Co.*, 117 Idaho 706, 720-21, 791 P.2d 1285, 1299-1300 (1990); *Garzee v. Barkley*, 121 Idaho 771, 774, 828 P.2d 334, 337 (Ct. App. 1992).

A motion for summary judgment should not be regarded with disfavor as the United States Supreme Court stated in *Celotex*:

[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed "to secure the just, speedy and inexpensive determination of every action."

Celotex, 477 U.S. at 317 (citation omitted). In opposing the motion, "'a mere scintilla of evidence or slight doubt as to facts' is not sufficient to create a genuine issue for purposes of

summary judgment.” See *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134 Idaho 84, 996 P.2d 303, 307 (2000), citing *Harpole v. State*, 131 Idaho 437, 439, 958 P.2d 594, 596 (1998). The nonmoving party “must respond to the summary judgment motion with specific facts showing there is a genuine issue for trial.” *Id.*, citing *Tuttle v. Sudenga Indus., Inc.*, 125 Idaho 145, 150, 868 P.2d 473, 478 (1994).

“The fact that both parties file motions for summary judgment does not necessarily mean that there are no genuine issues of material fact.” *Banner Life Ins. Co. v. The Dixon Irrevocable Tr.*, 206 P.3d 481 (citing *Moss v. Mid-Am. Fire & Marine Ins. Co.*, 103 Idaho 298, 302, 647 P.2d 754, 758 (1982)). “Conflicting evidentiary facts ... must still be viewed in favor of the nonmoving party.” *Id.* (citing *Argyle v. Slemaker*, 107 Idaho 668, 670, 691 P.2d 1283, 1285 (Ct.App. 1984)).

IV. ARGUMENT

Extreme Line is not entitled to a declaration of priority or a decree of foreclosure regarding the Mechanic’s Lien because Extreme Line failed to file a foreclosure action on such Mechanic’s Lien within the statutory period prescribed by Idaho law. Specifically, Idaho Code Section 45-510 provides as follows:

No lien provided for in this chapter binds any building, mining claim, improvement or structure for a longer period than six (6) months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien....

Idaho courts have held that the six month period set forth in section 45-510 “is a limitation not alone upon the remedy, but upon the right or liability itself; and that the lien is lost as against the interest of any person not made a party to an action to enforce it within the six month

period.” *Willes v. Palmer*, 78 Idaho 104, 108, 298 P.2d 972 (1956) (citing *Western Loan & Building Co. v. Gem State Lumber Co.*, 32 Idaho 497, 185 P. 554 (1919) (emphasis added)). In *Western Loan* the court expressly noted that “The time within which the suit must be brought operates as a limitation of the liability itself as created, and not of the remedy alone. It is a condition attached to the right to sue at all.” *Western Loan*, 32 Idaho at 501. More recently, the Idaho Supreme Court has explained the effect of Idaho Code Section 45-510 and the failure to file an action to foreclose on a mechanic’s lien within the statutory time period as follows:

The statute creates and limits the duration of the lien. The statute also gives jurisdiction to the court to foreclose or enforce a lien on certain conditions, the filing of a claim of lien, and the commencement of the action within the time specified after such claim is filed. If these things are not done no jurisdiction exists in the court to enforce the lien. When the limit fixed by statute for duration of the lien is past, no lien exists, any more than if it had never been created.

Palmer v. Bradford, 86 Idaho 395, 401, 388 P.2d 96 (1963) (multiple citations omitted). In other words, if an action to foreclose on a lien is not timely filed, then the lien ceases to exist, as though such lien had never been recorded in the first instance. *See Western Loan*, 32 Idaho at 501 (“As against the mortgage lien, the lien for material furnished, if any existed, is lost because an action to foreclose the same was not commenced within the time limited by the statute.”)

Extreme Line recorded the Mechanic’s Lien on December 19, 2007. Pursuant to Idaho Code Section 45-510, unless Extreme Line commenced proceedings to enforce the lien within that six months of the date of recording, i.e., on or before June 19, 2008, such lien expires and ceases to have any force or effect. Extreme Line did not commence an action to enforce the Mechanic’s Lien before June 19, 2008. Rather, Extreme Line did not take any action to enforce

the Mechanic's Lien until it filed a counterclaim and cross-claim seeking foreclosure of the lien on July 24, 2008, more than a month after the deadline established by Idaho Code Section 45-510. Because Extreme Line did not commence proceedings to enforce its lien rights within the statutory time frame, as required by Idaho Code Section 45-510, such lien was invalid and of no force and effect as of June 20, 2008. Accordingly, Extreme Line is not entitled to a declaration regarding the priority of its lien over IFA's interest in the property or a decree of foreclosure respecting the same. To the contrary, IFA is entitled to entry of an order declaring the Mechanic's Lien invalid.

It is anticipated that Extreme Line will argue that because another lien holder, Hap Taylor & Sons, Inc. d/b/a Knife River ("Hap Taylor") filed a complaint for foreclosure of its claim of lien on April 22, 2008, that such filing somehow tolled the running of the limitations period set forth in Idaho Code Section 45-510 and/or otherwise allows the filing of Extreme Line's counterclaim for foreclosure to relate back to Hap Taylor's April 22, 2008 filing date. IFA was unable to locate any authority for this position under Idaho law. In fact, such interpretation runs contrary to interpretations of the effect of Idaho Code Section 45-510 discussed above: namely that a mechanic's lien shall be treated as though it were never recorded if proceedings are not commenced to enforce the same within six months of the recording date. *See, e.g., Palmer v. Bradford*, 86 Idaho 395, 401, 388 P.2d 96 (1963).

Though the issue has not been expressly addressed in Idaho, interpreting a similar statute the Supreme Court of Virginia held that this type of limitations period requires some type of affirmative action on the part of the lienor within the statutory limitations period. *See Isle of Wight Materials Co., Inc. v. Cowling Bros, Inc.*, 246 Va. 103, 106 ("Merely being named as a

defendant in an enforcement action of another lienor is not the equivalent of either filing an independent suit or intervening in the suit of another.”) (citing *Commonwealth Mechanical Contractors, Inc. v. Standard Fed. Sav. & Loan*, 222 Va. 330, 332, 291 S.E.2d 811, 812 (1981)). Under this well reasoned, persuasive authority, the fact that another lien claimant filed a complaint to enforce its lien rights, naming Extreme Line as a defendant therein, is insufficient to preserve or protect Extreme Line’s lien rights. Extreme Line needed to take some affirmative action, such as filing a cross-claim and counterclaim to foreclose, within the statutory time frame as required by Idaho Code Section 45-510. Having failed to do so, the Mechanic’s Lien ceased to have any force or effect as of June 20, 2008, and Extreme Line’s cross-claim and counterclaim filed on July 24, 2008, seeking to foreclose the same was untimely.

V. CONCLUSION

For the foregoing reasons, IFA respectfully requests that this Court find that Extreme Line failed to protect its lien rights by filing an action to enforce the same within the six month statutory deadline and, accordingly, that such lien is of no force or effect. On such grounds, IFA further requests that this Court enter an order denying Extreme Line’s motion for summary judgment and an order granting IFA’s cross-motion for summary judgment.

DATED this 7th day of December, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Rebecca A. Rainey
Rebecca A. Rainey – Of the Firm
Attorneys for Defendants
Integrated Financial Associates, Inc.,
Geneva Equities, LLC, and
Certain Other Named Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of December, 2009, I caused a true and correct copy of the foregoing **COMBINED MEMORANDUM IN OPPOSITION TO EXTREME LINE LOGISTICS, INC.'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF INTEGRATED FINANCIAL ASSOCIATES, INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

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COMBINED MEMORANDUM IN OPPOSITION TO EXTREME LINE LOGISTICS, INC.'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF INTEGRATED FINANCIAL ASSOCIATES, INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT - 9

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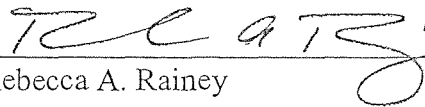
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FILED
A.M. 12 P.M.

DEC 09 2009

CANYON COUNTY CLERK
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Attorneys for Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4251C

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4252C

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-11321

COMES NOW the Plaintiff Hap Taylor & Sons, Inc., by and through its counsel of record, the law firm of TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A., and hereby respectfully submits this Motion for Summary Judgment pursuant to Rule 56 of the Idaho Rules of Civil Procedure seeking an order from this Court finding that the Plaintiff's Claims of Lien against the real property which is the subject matter of this action are superior to the interests of the Defendant Integrated Financial Associates, Inc. This Motion is further supported by the Memorandum in Support and the Affidavits of Jessee Rosin, Casey Daniels and David T. Krueck, filed concurrently herewith, and the pleadings and papers on file in this matter.

Oral argument is requested.

RESPECTFULLY SUBMITTED this 9th day of December, 2009.

TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.



David T. Krueck, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 225 N. 9th Street, Suite 820, Boise, Idaho 83702, certifies that on the 9TH day of December, 2009, he caused a true and correct copy of the foregoing document to be forwarded by the method(s) indicated below, to the following:

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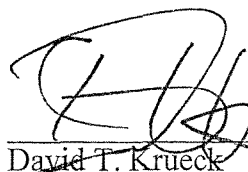
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FILED
A.M. 1:56 P.M.
DEC 09 2009
CANYON COUNTY CLERK
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Attorneys for Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

CASE NO. CV08-4251C

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

HAP TAYLOR & SONS, INC. d/b/a KNIFE
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CASE NO. CV08-4252C

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

CASE NO. CV08-11321

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

COMES NOW, the Plaintiff, Hap Taylor & Sons, Inc. d/b/a Knife River ("Hap Taylor"), by and through its counsel of record, Trout Jones Gledhill Fuhrman, P.A., and hereby respectfully submits this Memorandum in Support of Plaintiff's Motion for Summary Judgment.

I.

INTRODUCTION

This case involves the foreclosure of Hap Taylor's interests in real property located in Canyon County, Idaho, previously owned by Union Land Company, commonly referred to as the Summer Wind at Orchard Hills Subdivision. Hap Taylor recorded two (2) Claims of Lien against the real property which is the subject matter of this action, and has commenced foreclosure proceedings on its liens.¹ Hap Taylor's Motion for Summary Judgment seeks an order from the Court declaring that Hap Taylor's Claims of Lien have priority over the interest claimed by the Defendant Integrated Financial Associates, Inc. ("IFA") in the property.

II.

UNDISPUTED FACTS

1. In June 2006, Hap Taylor and Extreme Line Logistics, Inc. ("Extreme Line") entered into a contract whereby Hap Taylor agreed to perform construction work and provide materials to the property which is the subject matter of this action. Affidavit

¹ Hap Taylor initially commenced separate proceedings to enforce the Claims of Lien described in this motion. The cases have since been consolidated.

of Jessee Rosin in Support of Plaintiff's Motion for Summary Judgment ("Rosin Affidavit") ¶¶ 5-9, Exhibit 'A'; Affidavit of Casey Daniels ("Daniels Affidavit") ¶¶ 8-10, Exhibit 'B.'

2. Hap Taylor mobilized and commenced work to construct its improvement to the Property on August 22, 2006. Rosin Affidavit ¶ 15, Exhibit 'C'; Daniels Affidavit ¶ 15.

3. Hap Taylor discontinued its construction activities on the Project on or about August 29, 2007. Rosin Affidavit ¶ 16, Exhibit 'C'; Daniels Affidavit ¶ 16.

4. Hap Taylor's scope of work included the placement and compaction of all asphalt paving materials throughout the entire Summer Wind at Orchard Hills Subdivision. Rosin Affidavit ¶¶ 9-13; Daniels Affidavit ¶¶ 9-11.

5. Hap Taylor was not fully compensated for the work it performed under the terms and conditions of its contract with Extreme Line. Rosin Affidavit ¶ 18; Daniels Affidavit ¶ 17.

6. On October 25, 2007, Hap Taylor caused two (2) Claims of Lien to be recorded against the developer's interests in Phases I and II of the Summer Wind at Orchard Hills Subdivision, excepting certain lots, with the Canyon County, Idaho Recorder's Office, Instrument Nos. 2007071408 and 2007071409, in the amount of \$217,385.82, to foreclose the interests of the owners. Affidavit of David T. Krueck in Support of Plaintiff's Motion for Summary Judgment ("Krueck Affidavit") ¶ 3, Exhibit 'A.'

7. On October 26, 2007, counsel for Hap Taylor caused copies of the Claims of Lien to be sent to the owners or reputed owners and their registered agent via certified and regular mail. Krueck Affidavit ¶ 4, Exhibit 'B.'

8. On April 22, 2008, Hap Taylor filed its Complaints to foreclose its Claims of Lien with this Court, which have since been consolidated into the case at bar.

9. On April 29, 2008, counsel for Hap Taylor recorded a Lis Pendens for each of its foreclosure actions with the Canyon County Recorder's Office, Instrument Nos. 2008023476 and 2008023477. Krueck Affidavit ¶ 5, Exhibit 'C.'

10. IFA claims an interest in the Property by way of its Deed of Trust recorded with the Canyon County, Idaho Recorder's Office on May 18, 2007, Instrument No. 2007048606.

III.

STANDARD OF REVIEW

Rule 56(b) provides that a party against whom a claim is asserted may, at any time, move, with or without supporting affidavits, for a summary judgment in that party's favor as to all or any part thereof. See I.R.C.P. 56(b). Rule 56(c) of the Idaho Rules of Civil Procedure provides, in part, that upon the filing of a motion for summary judgment:

the judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law.

See also Tetzlaff v. Brooks, 130 Idaho 903, 950 P.2d 1242 (1997). A mere scintilla of evidence or only slight doubt as to the facts is not enough to create a genuine issue for purposes of summary judgment. Harpoole v. State, 131 Idaho 437, 439, 958 P.2d 594,

596 (1998). The non-moving party must respond to the summary judgment motion with the specific facts showing there is a genuine issue for trial. Tuttle v. Sudenga Industries, Inc., 125 Idaho 145, 150, 868 P.2d 473, 478 (1994).

Summary judgment is appropriate where a non-moving party fails to make a showing sufficient to establish the existence of an element essential to its case when it bears the burden of proof. Harris v. State Department of Health & Welfare, 123 Idaho 295, 298, 857 P.2d 1156, 1159 (1992). A party against whom a summary judgment is sought cannot merely rest on its pleadings, but when faced with affidavits or depositions supporting the motion, must come forward by way of affidavit, deposition, admissions or other documentation to establish the existence of material issues of fact which preclude the issuance of summary judgment. Podolan v. Idaho Legal Aid Services, Inc., 123 Idaho 937, 854 P.2d 280 (Ct. App. 1993). "A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." McGilvray v. Farmers New World Life Ins. Co., 136 Idaho 39, 42, 28 P.3d 380, 383 (2001).

IV.

ARGUMENT

A. Hap Taylor Has a Valid Lien Against the Property

Under Idaho law, every person or company providing labor, materials or professional services for the construction of improvements to real property has a lien against the real property for the cost of said labor, services or materials. The right to assert a lien against real property for providing construction services or materials originates in the Idaho State Constitution, which provides in pertinent part: "The

legislature shall provide by proper legislation for giving to mechanics, laborers, and materialmen an adequate lien on the subject matter of their labor.” Idaho State Constitution, Article VIII § 6. The statutory right to assert a mechanic’s lien is provided for in Idaho Code § 45-501, et seq.

Idaho’s lien statutes are liberally construed to effectuate their object and promote justice. *Metropolitan Life Ins. Co. v. First Sec. Bank of Idaho*, 94 Idaho 489, 493, 491 P.2d 1261, 1265 (1971). The goal of Idaho’s lien statutes is to compensate those that have performed work in the construction, alteration or repair of a structure. *Barber v. Honorof*, 116 Idaho 767, 768-69, 780 P.2d 89, 90-91 (1989). A lien claimant needs to only substantially comply with the statutory requirements in order to create a valid lien. *Franklin Bldg. Supply Co. v. Sumpter*, 139 Idaho 846, 850, 87 P.3d 955, 959 (2004).

Hap Taylor has a right to assert its Claims of Lien for the work it performed in this case. Pursuant to the terms of its contract with Extreme Line, Hap Taylor provided the materials, equipment and labor necessary to lay asphalt over and across the entire Summer Wind at Orchard Hills Subdivision, and has not been fully compensated for its work. The asphalt laid by Hap Taylor clearly benefits the whole development.

Idaho Code § 45-504 provides as follows:

“Any person who, at the request of the owner of any lot in any incorporated city or town, surveys, grades, fills in or otherwise improves the same, or who rents, leases or otherwise supplies equipment, materials or fixtures as defined in section 28-12-309, Idaho Code to such person for the improvement of any lot, or the street in front of or adjoining the same, has a lien upon such lot for his work done or material furnished or equipment, materials or fixtures as defined in section 28-12-309, Idaho Code, rented, leased or otherwise supplied.”

There is no dispute that Hap Taylor paved the dedicated streets described in the recorded plat for the entire Summer Wind at Orchard Hills Subdivision pursuant to Hap

Taylor's contract with Extreme Line. Idaho Code § 45-504 specifically allows Hap Taylor to assert its mechanics' lien rights against each and every lot and common area served by the road it constructed.

The Court should find as a matter of law that the work performed by Hap Taylor was done for the benefit of the property described in Hap Taylor's Claims of Lien. The Court should also find as a matter of law that Hap Taylor's Claims of Lien properly attach to the subject property.

B. Hap Taylor Perfected its Claims of Lien in Accordance with Idaho Law

Hap Taylor recorded and perfected its Claims of Lien against the property upon which its work was performed pursuant to Idaho Code §§ 45-501, et seq. Idaho Code § 45-507 contains the basic, statutory requirements for perfecting a valid mechanic's lien. This Code Section provides as follows:

- (1) Any person claiming a lien pursuant to the provisions of this chapter must file a claim for record with the county recorder for the county in which such property or some part thereof is situated.
- (2) The claim shall be filed within 90 days after the completion of the labor or services, or furnishing of materials.
- (3) The claim shall contain:
 - (a) A statement of his demand, after deducting all just credits and offsets;
 - (b) The name of the owner or reputed owner, if known;
 - (c) The name of the person by whom he was employed or to whom he furnished materials;
 - (d) A description of the property to be charged with the lien, sufficient for identification.
- (4) Such claim must be verified by the oath of the claimant, his agent or attorney, to the effect that the affiant believes the same to be just.
- (5) A true and correct copy of the claim of lien shall be served on the owner or reputed owner of the property either by delivering a copy thereof to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such delivery or mailing shall be made no later than five (5) business days following the filing of said claim of lien.

Idaho Code § 45-507. Hap Taylor's Claims of Lien meet all of the statutory requirements for perfection.

The Claims of Lien were recorded with the Canyon County Recorder's Office within ninety (90) days of the last day Hap Taylor performed work on the subject property. Hap Taylor's last day of work on the site was no earlier than August 29, 2007, and the Claims of Lien were recorded fifty-seven (57) days later on October 25, 2007.

The Claims of Lien were properly recorded with the Canyon County Recorder's Office, which is the county where the subject property is situated. There is no dispute that the property described Hap Taylor's liens is located in Canyon County, Idaho.

The Claims of Lien contain a statement of Hap Taylor's demand for payment after deducting all just credits. At the time Hap Taylor recorded its Claims of Lien on October 25, 2007, it was owed \$217,385.82 for the cost of the work it performed on the property under the terms of its contract with Extreme Line, and clearly makes this demand in its Claims of Lien.

The Claims of Lien properly state the names of the owners or reputed owners of the property subject to Hap Taylor's Claims of Lien. Hap Taylor recorded the Claims of Lien identifying the owners or reputed owners of the subject property. The plat recorded for the property identifies the owners of the Summer Wind at Orchard Hills Subdivision, and these owners and their registered agents are all named in Hap Taylor's liens.

The Claims of Lien state that Hap Taylor provided the labor, materials and equipment for its improvement to the property at the request of Extreme Line. As set forth in the Rosin and Daniels Affidavits filed concurrently herewith, Hap Taylor entered into a contract with Extreme Line to perform construction work to improve the property.

Hap Taylor, therefore, also met the statutory requirement to identify in its Claims of Lien the person by whom it was employed or furnished materials to.

The Claims of Lien accurately describe the real property subject to said liens. "If there appears enough in the description to enable a party familiar with the locality to identify the premises intended to be described with reasonable certainty, to the exclusion of others, it will be sufficient." *Treasure Valley Plumbing & Heating, Inc. v. Earth Resources Co.*, 106 Idaho 920, 922, 684 P.2d 322, 324 (Ct. App. 1984). The Claims of Lien attached and incorporated a legal description and recorded plat of the real property subject to said liens, excepting certain lots owned by different parties. This legal description adequately identifies the real property subject to Hap Taylor's claims.

The Claims of Lien are properly verified under oath by the attorney in fact of Hap Taylor. The Claims of Lien were also properly served on the fee simple owners of the real property described in the Claims of Lien, and the registered agent for these companies within five (5) business days after the Claims of Lien were recorded. The Claims of Lien were recorded on October 25, 2007. On October 26, 2007, true and correct copies of the recorded Claims of Lien were duly sent by certified and regular mail to the owners and their registered agent, Kerry Angelos.

Idaho Code § 45-510 provides that proceedings to foreclose a mechanic's lien filed under Title 45, Chapter 5 of the Idaho Code must be commenced within six (6) months from the date the lien is recorded. Hap Taylor commenced the present foreclosure action on April 22, 2008, which is within the six month period required by Idaho Code § 45-510.

The Court should find as a matter of law that Hap Taylor perfected its Claims of Lien against the subject property. Hap Taylor has met all of the technical, statutory requirements for attachment, perfection and foreclosure of its Claims of Lien, and is, therefore, entitled to foreclose its interest in the property as a matter of law.

C. Hap Taylor's Interest in the Property is Prior and Superior to the Interest of IFA

Idaho Code § 45-506 provides in pertinent part that a mechanic's lien is "preferred to any lien, mortgage or other encumbrance, which may have attached subsequent to the time when the building, improvement or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or materials or professional services were commenced to be furnished." "The effective date of labor and materialmen's liens is the date of the commencement of the work or improvement or the commencing to furnish material." *Metropolitan Life Ins. Co. v. First Sec. Bank of Idaho*, 94 Idaho 489, 492, 491 P.2d 1261, 1264 (1971).

The Idaho Supreme Court interpreted Idaho Code § 45-506 more than one hundred years ago to mean that "[a]ll liens for labor commenced and materials commenced to be furnished prior to recording [the] mortgages are prior and superior liens to said mortgages." *Pacific States Savings, Loan & Building Co. v. Dubois*, 11 Idaho 319, 320, 83 P. 513, 514 (1905); See also, *Ultrawall, Inc. v. Washington Mutual Bank*, 135 Idaho 832, 25 P.3d 855 (2001).

It is undisputed that IFA recorded its Deed of Trust against the property subject to Hap Taylor's Claims of Lien on May 18, 2007. Therefore, any interest IFA may have in the property attached on that date. It is also undisputed that Hap Taylor commenced

furnishing labor, materials and equipment to construct its improvement to the property on August 22, 2006, nearly nine (9) months prior to the recordation of IFA's Deed of Trust. Consequently, Hap Taylor's Claims of Lien against the property are prior and superior to the IFA Deed of Trust. The Court should find as a matter of law that IFA's interest in the property by way of its Deed of Trust is junior and inferior to the interest of Hap Taylor.

V.

CONCLUSION

Hap Taylor is entitled to summary judgment against IFA to subordinate IFA's interest in the property to Hap Taylor's Claims of Lien. Hap Taylor's Claims of Lien properly attach to the property on which Hap Taylor performed its construction work and the property benefits from this work. Hap Taylor's Claims of Lien are also enforceable under Idaho Code § 45-507, and Hap Taylor timely commenced its foreclosure proceedings as required by Idaho Code § 45-510.

RESPECTFULLY SUBMITTED this 9th day of December, 2009.

TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.

By: 

David T. Krucek, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 225 N. 9th Street, Suite 820, Boise, Idaho 83702, certifies that on the 4th day of December, 2009, he caused a true and correct copy of the foregoing document to be forwarded by the method(s) indicated below, to the following:

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David T. Krueck

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Attorneys for Extreme Line Logistics, Inc.

FILED
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DEC 09 2009

CANYON COUNTY CLERK
J DRAKE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE)
RIVER, an Oregon corporation doing business)
as Knife River,)

Plaintiff,)

v.)

L222-1 ID SUMMERWIND, LLC, an Idaho)
Limited Liability Company, et. al.,)

Defendants.)

HAP TAYLOR & SONS, INC. d/b/a KNIFE)
RIVER, an Oregon corporation doing business)
as Knife River,)

Plaintiff,)

v.)

L222-1 ID SUMMERWIND, LLC, an Idaho)
Limited Liability Company, et. al.,)

Defendants.)

CONGER MANAGEMENT GROUP, INC an)
Idaho corporation,)

Plaintiff,)

v.)

Case No. CV 08 4251-C

AFFIDAVIT OF CASEY DANIELS

Case No. CV 08 4252-C
(Consolidated with Case No.
CV 08 4251-C)

Case No. CV 08 11321-C
(Consolidated with Case No.
CV 08 4251-C)

L222-1 ID SUMMERWIND, LLC, an Idaho
Limited Liability Company, et. al.,

Defendants.

STATE OF IDAHO

County of _____

)
) :ss
)

CASEY DANIELS, being duly sworn upon oath, deposes and says:

1. I am at least eighteen (18) years of age and am competent to testify regarding the matters set forth herein.

2. I was the President of Extreme Line Logistics, Inc., an Idaho corporation, from 2003 through 2008.

3. Extreme Line Logistics, Inc. was administratively dissolved on or about November 6, 2008.

4. A true and correct copy of the last Annual Report filed by Extreme Line Logistics, Inc. on or about June 26, 2007 is attached hereto as Exhibit 'A,' and is fully incorporated herein by this reference.

5. I was at all times described in this affidavit, authorized to enter into contracts on behalf of Extreme Line Logistics, Inc.

6. Extreme Line Logistics, Inc. entered into a contract with Union Land Company for the construction of site improvements for the Summer Wind at Orchard Hills development located in Canyon County, Idaho ("Development").

7. A portion of the work Extreme Line Logistics, Inc. agreed to perform as part of its contract with Union Land Company for the construction of site improvements

for the Development included the placement and compaction of asphalt paving throughout the entire Development.

8. Extreme Line Logistics, Inc. solicited a bid from Hap Taylor & Sons, Inc. ("Hap Taylor") for the placement and compaction of asphalt for the Development.

9. In June 2006, Extreme Line Logistics, Inc. received and accepted a Proposal from Hap Taylor whereby Hap Taylor agreed to provide all labor, equipment and materials necessary to pave all of the asphalt throughout the Development. A true and correct copy of the Proposal from Hap Taylor accepted by Extreme Line Logistics, Inc. is attached hereto as Exhibit 'B,' and is fully incorporated herein by this reference.

10. Extreme Line Logistics, Inc. entered into a contract with Hap Taylor for the performance of the work described in Hap Taylor's Proposal, and agreed to pay Hap Taylor the unit prices contained in Hap Taylor's Proposal described herein for all asphalt constructed throughout the entire Development.

11. As a subcontractor to Extreme Line Logistics, Inc., Hap Taylor's scope of work included the placement and compaction of asphalt paving throughout the entire Development, which included, but was not limited to, paving the dedicated streets for the Development.

12. In August 2007 on behalf of Extreme Line Logistics, Inc., I requested that Hap Taylor provide Extreme Line Logistics, Inc. with a change order under our subcontract agreement for paving an asphalt pathway within the Project.

13. The cost of the additional materials, equipment and labor necessary to construct the pathway described in paragraph 12 above was intended by Extreme Line Logistics, Inc. to be additional work performed under the original subcontract agreement

entered into with Hap Taylor in 2006 and was part of the scope of work Hap Taylor agreed to perform for Extreme Line Logistics, Inc.

14. Pursuant to our subcontract agreement, Hap Taylor charged Extreme Line Logistics, Inc. the contract unit price for the asphalt necessary for the construction of the pathway.

15. Hap Taylor commenced work within the Development on August 22, 2006.

16. The last date Hap Taylor performed any substantial work within the Development was August 29, 2007.

17. Extreme Line Logistics, Inc. did not fully compensate Hap Taylor for the work it performed under the terms of the subcontract agreement between Extreme Line Logistics, Inc. and Hap Taylor.

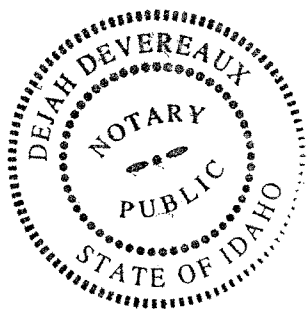
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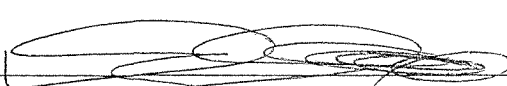
FURTHER YOUR AFFIANT SAYETH NAUGHT.

By


Casey Daniels

Subscribed and sworn to before me this 9th day of December, 2009.




Notary Public, State of Idaho

Residing at: Burien, ID

My commission expires: 1/26/2013

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 225 N. 9th Street, Suite 820, Boise, Idaho 83702, certifies that on the 9TH day of December, 2009, he caused a true and correct copy of the foregoing document to be forwarded by the method(s) indicated below, to the following:

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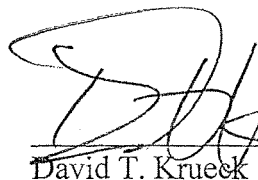

David T. Krueck

EXHIBIT “A”

No. C 150521	Due no later than August 31, 2007 Annual Report Form		2. Registered Agent and Office NO PO BOX		
Return to: SECRETARY OF STATE 450 NORTH FOURTH STREET PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE	1. Mailing Address - Correct in this box, if applicable		CASEY M DANIELS 8145 E COLTER BAY DR NAMPA, ID 83687		
	EXTREME LINE LOGISTICS, INC. 8145 E COLTER BAY DR NAMPA, ID 83687		3. New Registered Agent Signature		
4. Corporations: Enter Names and Business Addresses of President, Secretary and Directors.					
<u>Office held</u>	<u>Name</u>	<u>Street or P.O. Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
President	Casey M. Daniels	8145 E. Colter Bay Dr.	Nampa,	ID	83687
VP	Cassie M. Daniels	8145 E. Colter Bay Dr.	Nampa	ID	83687
Sec.	Dixie Christensen	8145 E. Colter Bay Dr.	Nampa	ID	83687
5. Organized Under the Laws of: IDAHO C 150521		6. Signature <u>Kelly Beltz</u> Name (Typed or Printed) <u>Kelly Beltz</u>		Date <u>6-22-07</u> Title <u>Controller</u>	

Issued 06/01/2007

Do Not Tape or Staple

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EXHIBIT "B"

Masco, Inc.

8450 W. Gowen Rd.
Boise, Idaho 83709
Phone: (208) 382-6182
Fax: (208) 382-6188

PROPOSAL

Excavating & Paving
Contractor

Date: June 26, 2006

Submitted To : E.L.C.
Street Address : 8145 E. Collier Bay Dr.
City, State, Zip : Nampa, ID 83627

Attn: Casey Daniels
Phone 465-5053
Fax 465-5065

Project Name : Summer Wind @ Orchard Hills Ph 1 & 2
Project Address : Greenleaf, ID
Engineer : N/A

Plan Date: VERBAL

Last Revision Date:

BID REFLECTS:

- 1) Place and compact 3" of CL III ISPCW Plant Mix.

Approximately 6,020 TON @ \$64.50 \$388,290.00

Billing to be based on actual tonnage.

DOES NOT INCLUDE THE FOLLOWING:

- 1) Permits, fees, or bonds of any kind.
- 2) Tests for inspections or compaction testing.
- 3) Off-site disposal of excess fill material.
- 4) Foundation stabilization.
- 5) Surface repair.
- 6) Concrete collars.
- 7) Drop inlets.
- 8) Rock excavation, if required.
- 9) Surveying or staking of work quoted.
- 10) Blue marker at fire hydrant.
- 11) Pavement striping.
- 12) Erosion control or SWPP Plan.

Aggregate base for paving to be checked for stability and any soft spots to be repaired before Masco arrives to pave.

All items on this proposal requiring hot plant mix asphalt are based on projected liquid asphalt cost of \$400.00 per Ton, FOB supplier. Masco retains the exclusive right to honor the quoted price, in the event that oil prices escalate to above the quoted price. By accepting this proposal, in this form or any other, the customer agrees to pay Masco the extra costs at Masco's discretion.

Masco shall be paid for actual quantities installed. Payment is due upon progress billings each 20 days. The amount due shall bear interest at the highest rate allowed by law from date of billing.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to the specifications and standard practices. Any alteration or deviation from above specifications involving extra costs will be charged only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond Masco's control. Masco's workers are fully covered by Worker's Compensation Insurance. Masco may withdraw this proposal if not accepted within 15 days from the date of proposal. In the event of litigation, the prevailing party shall be entitled to reasonable attorney's fees.

Masco, Inc.

Authorized Signature

Jesse Rosin

Date

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. Masco is authorized to do the work as specified. Payment will be made as outlined above.

Authorized Signature

Date

Or proposal 20061226 Summer Wind @ Orchard Hills Ph 1 & 2.doc

Thank You For Your Business